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10 and CALIFORNIA NEWS PUBLISHERS
ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 LOS ANGELES POLICE PROTECTIVE
14 LEAGUE,

15 Petitioner,

16 v.

17 CITY OF LOS ANGELES, a municipal
corporation, MICHAEL R. MOORE, Chief of
18 Police for the City of Los Angeles, and DOES 1
through 20, inclusive,

19 Respondents.
20

Case No. 18STCP03495

**EX PARTE APPLICATION FOR LEAVE TO
INTERVENE, OR IN THE ALTERNATIVE,
FOR ORDER SHORTENING TIME ON
MOTION FOR LEAVE TO INTERVENE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR LEAVE TO
INTERVENE; [PROPOSED] ANSWER IN
INTERVENTION; [PROPOSED]
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

21 FIRST AMENDMENT COALITION, a
California non-profit, public benefit
22 corporation; LOS ANGELES TIMES
COMMUNICATIONS LLC, a Delaware
23 limited liability company; CALIFORNIA
NEWSPAPERS PARTNERSHIP L.P., a
24 Delaware limited partnership; THE CENTER
FOR INVESTIGATIVE REPORTING,
25 California non-profit, public benefit
corporation; and CALIFORNIA NEWS
26 PUBLISHERS ASSOCIATION, an association
of California news organizations,

27 Intervenors.
28

Hearing:

Date: January 18, 2019

Time: 8:30 a.m.

Dept.: 85

[Complaint Filed: December 31, 2018]

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1 **NOTICE OF EX PARTE APPLICATION OR, IN THE ALTERNATIVE,**
2 **MOTION FOR LEAVE TO INTERVENE**

3 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that on January 18, 2019, at 8:30 a.m., or as soon thereafter as
5 the matter can be heard, in Department 85 of the Los Angeles County Superior Court, located at
6 111 North Hill Street, Los Angeles, California 90012, Proposed Intervenor's First Amendment
7 Coalition ("FAC"), Los Angeles Times Communications LLC ("LAT"), California Newspapers
8 Partnership L.P. (doing business as the Southern California Newspaper Group ("SCNG") and the
9 Bay Area News Group ("BANG")), The Center for Investigative Reporting, Inc. ("CIR"), and
10 California News Publishers Association ("CNPA") (collectively, "Intervenors") will, and hereby
11 do, bring this ex parte application seeking leave to intervene in the above-captioned action pursuant
12 to Code of Civil Procedure section 387, or in the alternative, for an order shortening time for the
13 hearing and determination of Intervenor's motion for leave to intervene.

14 This application for leave to intervene, or in the alternative, for an order shortening time on
15 motion for leave to intervene, is based on the following grounds:

16 1. Pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B), Intervenor's
17 have a mandatory right to intervene. To the extent they do not have a right to intervene, then
18 pursuant to Code of Civil Procedure section 387, subdivision (d)(2), Intervenor's should be granted
19 permission to intervene.

20 2. Intervenor's application to intervene is timely and will not impair or impede the
21 prompt resolution of the issues presented in this action.

22 3. All parties who have appeared in this action have been notified through their counsel
23 of record by email at 9pm on Wednesday, January 16, 2019, that this application by the Intervenor's
24 will be presented to the Court on an *ex parte* basis on the date identified herein. The Declaration of
25 Tenaya Rodewald, filed as a separate document in support of this application, describes the notice
26 provided. A copy of the notice provided to counsel is attached to the Rodewald Declaration as
27 Exhibits 1 and 2.

28 4. Pursuant to Code of Civil Procedure § 387, this Court should grant leave to

1 Intervenor to intervene *ex parte*. Alternatively, if this Court does not grant leave to Intervenor to
2 intervene by *ex parte* application, this Court should order that the application for leave to intervene
3 be deemed a noticed motion, and that the time for briefing, hearing, and determination of the
4 motion be shortened. Specifically, the date for service and filing of opposition papers on the merits
5 by Intervenor should remain January 22, 2019, with any replies filed and served by January 29,
6 2019. Any oppositions to the motion for leave to intervene should be filed and served by January
7 28, 2019, and any replies by February 1, 2019. The hearing on the motion for leave to intervene
8 should be set for February 5, 2019.

9 5. Pursuant to the California Rules of Court, Rule 3.1202, subdivision (a), the attorneys
10 representing Petitioner Los Angeles Police Protective League are Richard A. Levine, Zachery A.
11 Lopes, and Brian P. Ross of Rains Lucia Stern St. Phalle & Silver, PC, 1428 2nd Street, Suite 200,
12 Santa Monica, California 90401, (310) 393-1486, rlevine@rlslawyers.com. On information and
13 belief, the attorney of record for Respondents is Los Angeles City Attorney Mike Feuer of the Los
14 Angeles City Attorney's Office, James K. Hahn City Hall East, Suite 800, Los Angeles, California
15 90012, (213) 978-8100, soraya.kelly@lacity.org, julie.raffish@lacity.org .

16 6. This *ex parte* application is based on the information provided herein, the
17 accompanying Memorandum of Points and Authorities in support thereof, the concurrently filed
18 Declarations of Tenaya Rodewald, David Snyder, Jeff Glasser, James Ewert, Victoria Baranetsky,
19 Todd Harmonson and Bert Robinson, the Proposed Answer in Intervention, attached hereto as
20 **Exhibit A**, the Proposed Memorandum In Opposition to the Petition for Writ of Mandate, attached
21 hereto as **Exhibit B**, the concurrently filed Proposed Order, the records and pleadings on file for
22 this matter, any additional authority, evidence, or argument that may be presented prior to or at the
23 hearing on this application, and any further matters as this Court may consider.

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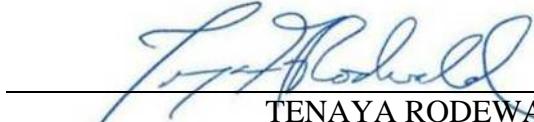
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Dated: January 17, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By


TENAYA RODEWALD
Attorneys for FIRST AMENDMENT COALITION, LOS
ANGELES TIMES COMMUNICATIONS LLC, CALIFORNIA
NEWSPAPERS PARTNERSHIP L.P., THE CENTER FOR
INVESTIGATIVE REPORTING, and CALIFORNIA NEWS
PUBLISHERS ASSOCIATION

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The proposed intervenors in this action are organizations that promote and defend the right
4 of access to government records and seek to advance government transparency and accountability
5 through public oversight. The First Amendment Coalition (“FAC”), Los Angeles Times
6 Communications LLC (“LAT”), California Newspapers Partnership L.P. (doing business as the
7 Southern California Newspaper Group (“SCNG”) and Bay Area News Group (“BANG”)), The
8 Center for Investigative Reporting, Inc. (“CIR”), and California News Publishers Association
9 (“CNPA”) (collectively, “Intervenors”) each have a strong and direct interest in accessing
10 government records concerning the use of force and serious misconduct by law enforcement
11 officers, and in promoting laws and policies that increase public access to such information.

12 Petitioner Los Angeles Police Protective League (“Petitioner” or “LAPPL”) filed a Verified
13 Petition for Writ of Mandate, Alternative Writ of Mandate, and Request for Stay Order (“Petition”) on December 31, 2018 seeking to prevent the City of Los Angeles (“City”), the Chief of Police for
14 the City of Los Angeles, Michel R. Moore (“Moore”), and Does 1 through 20 (“Respondent Does”) (collectively “Respondents”) from disclosing information contained in City and Los Angeles Police
15 Department (“LAPD”) personnel records and information regarding incidents or reflecting conduct
16 occurring before January 1, 2019 (“pre-2019 records”). Specifically, LAPPL contends that
17 application of SB 1421 to pre-2019 records would be an impermissible “retroactive” application of
18 the law, and that disclosure of records regarding conduct occurring before January 1, 2019 to the
19 public should be prohibited. This Court issued an preliminary alternative writ of mandate and
20 immediate stay order on December 31, 2019, preventing Respondents from disclosing pre-2019
21 records containing information subject to Penal Code section 832.7 as amended by SB 1421
22 (“Section 832.7”).

23 Respondents may or may not file a Return and may otherwise oppose the Petition. (Other
24 similarly situated public agencies have not.) However, the Respondents cannot adequately
25 represent and speak for the interests of the Intervenors. The Respondents’ primary concern in this
26 action is compliance with their legal obligations under the California Public Records Act
27
28

1 (“CPRA”). They have little if any direct interest in ensuring that Section 832.7 is construed in a
2 manner consistent with its Legislative purpose of expanding public access to information regarding
3 the use of force and serious misconduct by law enforcement officials. Moreover, Respondent
4 Moore, in his official capacity, has actively expressed the LAPD’s opposition to the application of
5 Section 832.7 to pre-2019 records, citing concerns that such application will impose significant
6 burdens upon the department’s investigatory staff. (Petition, Ex. B.) In contrast, Intervenors have
7 an independent, substantial, and direct interest in protecting the right of access to government
8 records. In addition, Intervenors have submitted requests for pre-2019 records under the California
9 Public Records Act (“CPRA”). Should this Court grant the Petitioner’s request for a final writ of
10 mandate, Intervenors’ access rights would be permanently and irreparably harmed.

11 Accordingly, because the Court’s determination regarding Petitioner’s requests directly
12 affects Intervenors, Intervenors respectfully request leave to intervene in this action to oppose the
13 Petition and to vindicate the public’s and the press’s right of access to government records under
14 the California Public Records Act, Article I, § 3(b) of the California Constitution, and Section 832.7
15 as amended by the California Legislature.

16 A copy of Intervenors’ Proposed Answer in Intervention is submitted herewith as **Exhibit A**
17 (hereinafter “Ex. A”). Intervenors’ Memorandum of Points and Authorities in Opposition to the
18 Petition is submitted herewith as **Exhibit B**.

19 **II. FACTUAL BACKGROUND**

20 **A. The Enactment of SB 1421**

21 In recognition of the public’s need for information about serious police misconduct, officer-
22 involved shootings, and other uses of force by law enforcement officers, the California Legislature
23 passed and Governor Jerry Brown signed into law SB 1421, which became effective January 1,
24 2019. (Proposed Answer in Intervention, [Ex. A], ¶¶ 19-22.) The new law amends Penal Code
25 sections 832.7 and 832.8, and expands access to certain records by making records relating to
26 incidents of (A) officer involved shootings and serious uses of force, (B) sustained findings of
27 sexual assault, and (C) sustained findings of serious dishonesty, subject to public disclosure through
28 the California Public Records Act (the “CPRA”). Specifically, the statute now provides:

1 Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code,
2 or any other law, ***the following peace officer or custodial officer personnel records*** and
3 records maintained by any state or local agency ***shall not be confidential and shall be made***
4 ***available for public inspection*** pursuant to the California Public Records Act ...:

(A) A record relating to the report, investigation, or findings of ***any*** of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or
custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer
against a person resulted in death, or in great bodily injury.

(B) (i) ***Any*** record relating to an incident in which a sustained finding was made ... that a
peace officer or custodial officer engaged in sexual assault involving a member of the
public. ...

(C) ***Any*** record relating to an incident in which a sustained finding was made ... of
dishonesty by a peace officer or custodial officer directly relating to..." certain things
"including, but not limited to, ***any*** sustained finding of perjury, false statements, filing false
reports, destruction, falsifying, or concealing of evidence.

(*Ibid.*; See Pen. Code § 832.7, subd (b) [as amended].) Section 832.7(b)(2) further specifies:

Records that shall be released pursuant to this subdivision include ***all*** investigative reports;
photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy
reports; ***all*** materials compiled and presented for review to the district attorney or to any
person or body charged with determining whether to file criminal charges against an officer
in connection with an incident ...

(*Id.*) For some years prior to the enactment of SB 1421, such information was available through
discovery in civil or criminal litigation, pursuant to a motion made in accordance with Penal Code
section 1043. (Ex. A, ¶ 57.)

The declaration of intent in SB 1421 reflects the Legislature's findings that the public has a
particularly strong interest in disclosure of records concerning police misconduct and officer-
involved shootings:

(a) Peace officers help to provide one of our state's most fundamental government
services. To empower peace officers to fulfill their mission, the people of
California vest them with extraordinary authority — the powers to detain, search,
arrest, and use deadly force. Our society depends on peace officers' faithful
exercise of that authority. Misuse of that authority can lead to grave constitutional
violations, harms to liberty and the inherent sanctity of human life, as well as
significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about
officer-involved shootings and other serious uses of force. Concealing crucial
public safety matters such as officer violations of civilians' rights, or inquiries into
deadly use of force incidents, undercuts the public's faith in the legitimacy of law

1 enforcement, makes it harder for tens of thousands of hardworking peace officers
2 to do their jobs, and endangers public safety.

3 (Ex. A, ¶ 20; SB 1421, § 1.) SB 1421 was passed on August 31, 2018, signed by Governor Brown
4 on September 30, 2018. It became effective January 1, 2019. (Ex. A, ¶ 22.)

5 **B. LAPPL's Petition**

6 On December 31, 2018, three months after SB1421 was enacted but just one day before the
7 bill was scheduled to go into effect, LAPPL filed this Petition contending that applying SB 1421 to
8 records containing information about incidents that occurred prior to January 1, 2019 is an
9 impermissible retroactive application of the law. (Ex. A, ¶¶ 2, 23.) Petitioner sought a Writ of
10 Mandate and stay directing Respondents to refrain from “retroactively” enforcing SB 1421 by
11 releasing any pre-2019 records that would otherwise be subject to public disclosure under the CPRA.
12 (*Ibid.*; Petition, at 6-7) The Court issued an alternative writ and stay on December 31, 2018.

13 **C. The Intervenors**

14 Intervenors each have a strong interest in accessing the City's records concerning serious
15 misconduct and uses of force by LAPD officers, and in promoting laws and policies that increase
16 public access to such information. (Ex. A, ¶¶ 8-13, 25-35.)

17 FAC is a nonprofit public benefit corporation dedicated to advancing the public's right to
18 participate in government and access information regarding the conduct of the people's business.
19 The public has a particularly strong interest in accessing the City's records concerning serious
20 misconduct by LAPD officers, and FAC is interested in promoting laws and policies that increase
21 public access to such information. (Ex. A, ¶ 8, 26, 27; Declaration of David Snyder, filed herewith
22 (“Snyder Decl.”), ¶ 2-3) FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an
23 open letter to Senator Nancy Skinner, the bill's author, expressing its strong support of SB 1421.
24 (Snyder Decl., Ex. A.) That same day, FAC posted the letter on its website, urging others to also
25 support of the bill. (*Id.*, Ex. B.) FAC is listed in the official legislative analyses among the
26 organizations that publicly supported SB 1421. FAC's support of SB 1421 reflects its mission to
27 advance transparency and accountability of government and government employees, including law
28 enforcement officers, and to prevent government secrecy and censorship. (*Id.*, ¶ 3.)

1 On January 10, 2019, FAC submitted a CPRA request, both through the LAPD's online
2 public records request portal and by email and letter delivered via U.S. mail to Moore, for LAPD
3 records from 2017 and 2018 that contain information subject to SB 1421. (Ex. A, ¶ 27; Snyder
4 Decl., ¶¶ 4, 5.) The City Clerk's Office responded by email on January 10, 2019, claiming that the
5 2017 and 2018 police records had not been transferred to the City Records Center, and that FAC
6 must submit its request through LAPD's online public records request portal to receive a necessary
7 release of the records from LAPD. (*Ibid.*) FAC did so, yet as of January 16, 2019, Respondents
8 have failed to produce the requested records pursuant to the CPRA and SB 1421.

9 LAT is the largest daily newspaper based in California. (Ex. A, ¶¶ 10, 29-31; Declaration of
10 Jeff Glasser filed herewith ("Glasser Decl."), ¶ 2.) LAT's popular news and information website,
11 www.latimes.com, attracts a national audience. LAT regularly joins litigation defending the
12 public's rights of access to government records and meetings. (*Ibid.*) LAT previously vindicated
13 the California public's rights of access to the names of police officers (*Commission on Peace*
14 *Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278 (*POST*)) and the names of
15 most officers involved in shootings in California (*Long Beach Police Officers Association v. City of*
16 *Long Beach* (2014) 59 Cal.4th 59 (*LBPOA*)). (*Ibid.*) In recent years, LAT also ensured public
17 access to a consultant's report on the shooting by Pasadena police of an unarmed teenager
18 (*Pasadena Police Officers Association v. City of Pasadena* (2015) 240 Cal.App.4th 268) and the
19 names of officers who pepper sprayed student protesters at the University of California, Davis
20 (*Federated University Police Officers Assoc. v. Superior Court* (2013) 218 Cal.App.4th 18). (*Ibid.*)
21 As part of these cases, the Supreme Court of California has recognized that the "public's interest in
22 the qualifications and conduct of peace officers is substantial" (*POST, supra*, 42 Cal.4th at p. 297-
23 299) and that "officers hold one of the most powerful positions in our society; our dependence on
24 them is high and the potential for abuse of power is far from insignificant" (*LBPOA, supra*, 59
25 Cal.4th at pp. 73-74) (internal citation omitted)). On January 1, 2019, LAT submitted CPRA
26 requests to both the LAPD and the Los Angeles Port Police for records involving information
27 covered by SB 1421 including pre-2019 records. (Ex. A, ¶¶ 30-31; Glasser Decl., ¶ 4-5.) On
28 January 8 and January 10, 2019, Respondents responded that they are prohibited from disclosing or

1 providing any records relating to incidents occurring before January 1, 2019, due to this Court's
2 temporary order in these proceedings staying the City's enforcement of SB 1421. (*Ibid.*) Because
3 LAT is headquartered within the City of Los Angeles, reports on matters involving the LAPD, and
4 maintains a strong interest in inspecting records concerning misconduct of LAPD peace officers,
5 LAT has a concrete interest in ensuring public access to all disclosable LAPD disciplinary records,
6 including those created before the law's enactment and involving information of pre-2019
7 incidents. (Glasser Decl., ¶ 3.)

8 The California Newspapers Partnership is a Delaware General Partnership, which operates
9 both BANG and SCNG as well as the Northern California News Group. (Ex. A, ¶ 11; Declaration
10 of Bert Robinson filed herewith ("Robinson Decl."), ¶ 2-4.) BANG, is a news organization that
11 publishes two daily newspapers, The Mercury News, based in San Jose, and the East Bay Times,
12 based in Oakland and Walnut Creek, as well as more than a dozen weekly newspapers. (*Ibid.*) The
13 organization's websites, mercurynews.com and eastbaytimes.com, attract more than half a million
14 visitors daily. (*Ibid.*) BANG regularly pursues litigation defending the public's right of access to
15 government records and meetings. (*Ibid.*) Its work relies heavily on the use of the California Public
16 Records Act, and it has a longstanding interest in putting a spotlight on the inner workings of law
17 enforcement, having produced the award-winning series Tainted Trials, Stolen Justice, which
18 examined misconduct in the justice system in Santa Clara County. (*Ibid.*)

19 BANG, as a major news organization in California, has a high interest in obtaining
20 information made public by SB 1421. (*Ibid.*) On January 6, BANG published one of the first
21 stories in the state using records made available by SB 1421, detailing the history of a Burlingame
22 police officer who sought to force women he arrested to trade sex for leniency. (*Ibid.*) After the
23 publication of the article, the San Mateo District Attorney expressed surprise that the officer had
24 been accused of multiple incidents of such behavior, saying the DA's office had been informed of
25 only one, and announced it would consider reopening an earlier investigation of the officer. (*Ibid.*)
26 Given this, BANG has a direct interest in bringing similar stories to light regarding the City. (*Ibid.*)

27 SCNG publishes eleven daily newspapers, 20 weeklies and four magazines in one of the
28 world's largest metro areas. (Ex. A, ¶¶ 12, 33; Declaration of Todd Harmonson filed herewith

1 (“Harmonson Decl.”), ¶ 2.) From Long Beach to the San Fernando and San Gabriel Valleys, to the
2 beaches of Orange County to the vast Inland Empire, SCNG’s newspapers, including The Orange
3 County Register, The Press-Enterprise, Los Angeles Daily News and Long Beach Press-Telegram,
4 have a long and well-established history of service to their communities. (*Ibid.*) Each of the
5 newspapers comprising the SCNG maintains a large and loyal subscriber base of readers who are
6 well-served by SCNG’s diligent public interest and investigative journalism. (*Ibid.*) SCNG’s
7 publications have been recognized by state and national organizations for breaking news, public
8 service, and investigative reporting, including a Pulitzer prize for local reporting for the Daily
9 Breeze in 2015. (*Ibid.*) On January 1, 2019, SCNG submitted a CPRA request to LAPD for records
10 of the LAPD officer-involved shootings of Ezell Ford, Elizabeth Tollison, and Eric Rivera, which
11 occurred before January 1, 2019. (Ex. A, ¶ 33; Harmonson Decl. ¶ 3.) On January 10, 2019, the
12 LAPD’s CPRA Unit responded to SCNG’s request via email that it was prohibited from disclosing
13 or providing any records relating to incidents occurring before January 1, 2019, due to the Court’s
14 December 31, 2018 temporary stay Order in these proceedings. (*Ibid.*)

15 CIR, a California non-profit, public benefit corporation founded in 1977, is the nation’s first
16 nonprofit investigative newsroom. (Ex. A, ¶¶ 13, 34, 35; Declaration of Victoria Baranetsky filed
17 herewith (“Baranetsky Decl.”), ¶¶ 2, 3.) CIR produces investigative journalism for its website
18 Reveal, <https://www.revealnews.org>, the Reveal national public radio show and podcast, and
19 various documentary projects. (*Ibid.*) CIR is deeply committed to ensuring that the public’s right to
20 know is well-protected. (*Ibid.*) It consistently pursues this mission by reporting on matters of
21 public importance, regularly using public records laws around the country to accomplish its
22 reporting, and joining initiatives that support the public’s right. (*Ibid.*) CIR is therefore squarely
23 interested in ensuring that SB 1421 is correctly applied by requiring that public agencies follow
24 through on their obligations to disclose information. (*Ibid.*) More specifically as to the subject
25 matter of the statute, CIR regularly reports on information related to police misconduct, law
26 enforcement’s use of deadly force, uneven application of the law by police, as well as internal
27 corruption, all of which may become more transparent under the application of this new law.
28 (*Ibid.*) In addition, on January 14, 2019, CIR submitted a CPRA request to the LAPD seeking

1 records subject to SB 1421 relating to incidents in 2018. (*Ibid.*) As of January 16, 2019, CIR had
2 not received a response from Respondents. (*Ibid.*)

3 CNPA is a nonprofit public benefit corporation organized under the laws of California. (Ex.
4 A, ¶ 9, 28; Declaration of James Ewert filed herewith (“Ewert Decl.”), ¶¶ 2-3.) For over 130 years,
5 CNPA’s mission has been to champion the ideals of a free press in our democratic society and
6 protect the interests of newspapers throughout the state, from the smallest weekly to the largest
7 metropolitan daily. (*Ibid.*) Toward this end, CNPA was a co-sponsor of SB 1421, working closely
8 with Senator Skinner, the author of the bill, to draft amendments, negotiate language with
9 stakeholders and helping to shepherd the bill as it progressed through the legislative process. (*Ibid.*)
10 CNPA members use the CPRA on a daily basis to access and provide to readers information about
11 government actions and decisions made by government officials in their communities. (*Ibid.*)
12 CNPA members also use this information to independently investigate the conduct of agencies to
13 identify instances of potential malfeasance or corruption by government officials. (*Ibid.*) Since
14 most members of the public are unable to engage in these activities themselves, CNPA members
15 serve in the role of a public trust. (*Ibid.*) In light of recent developments where the relationship
16 between law enforcement and members of the public has been the focus of vigorous public
17 discussion, the public and newspapers have an exceedingly strong interest in disclosure of records
18 concerning serious, sustained findings of misconduct by law enforcement officers. (*Ibid.*) CNPA
19 and its members have a significant interest in ensuring that the intent of SB 1421 is faithfully
20 executed by public agencies throughout the state and the public’s right of access to the information
21 governed by SB 1421 as well as under Section 3 of Article I of the California Constitution and
22 California common law is not diminished. (*Ibid.*)

23 **III. INTERVENORS ARE ENTITLED TO INTERVENE PURSUANT TO CALIFORNIA**
24 **CODE OF CIVIL PROCEDURE SECTION 387**

25 California Code of Civil Procedure section 387 (“section 387”) provides for both mandatory
26 and permissive intervention. The purpose of intervention is “to promote fairness by involving all
27 parties potentially affected by a judgment” and to avoid multiplicity of actions. (*Simpson Redwood*
28 *Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199 (*Simpson Redwood*) [citations

omitted]; see also *San Bernardino County v. Harsh Cal. Corp.* (1959) 52 Cal.2d 341, 346.) As such, “section 387 should be liberally construed in favor of intervention.” (*Simpson Redwood, supra*, 196 Cal.App.3d at p. 1200 [citations omitted].) Where the party seeking to intervene has made a public records act request that would be impacted by the litigation, that party should, absent unusual circumstances, be allowed to intervene. (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1269-70 (*Marken*).)

A. Intervenorors Are Entitled to Intervene As of Right

California Code of Civil Procedure section 387(d)(1) provides, in relevant part:

The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if . . . :

(B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person’s ability to protect that interest, unless that person’s interest is adequately represented by one or more of the existing parties.

(Code Civ. Proc. § 387.) Thus, intervention is mandatory where (1) the proposed intervenor has an interest relating to the property or transaction which is the subject of the pending case; (2) the proposed intervenor’s ability to protect that interest may be impaired or impeded by the disposition of the pending case; (3) the proposed intervenor’s interests are not adequately represented by the existing parties; and (4) the proposed intervenor’s application is timely. (*Ibid.*; see also *Siena Court Homeowners Ass’n v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423–24 [citations omitted]; *Marken, supra*, 202 Cal.App.4th at p. 1269-70, n.17.)

1. Intervenorors Have a Direct Interest in the Subject of the Pending Case

Intervenorors have a direct and significant interest in the transaction that is the subject matter of this action. Under section 387, “transaction” is broadly interpreted as “[s]omething which has taken place, whereby a cause of action has arisen.” (*California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 96 [citations omitted].) An intervenor’s interest in the transaction is direct and immediate where the intervenor stands to “gain or lose by the direct legal operation and effect of the judgment.” (*Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 663 [citations omitted].) “A person has a direct interest justifying intervention in litigation where the judgment in the action of itself adds to or detracts from his legal rights without reference to rights

1 and duties not involved in the litigation.” (*Continental Vinyl Products Corp. v. Mead Corp.* (1972)
2 27 Cal.App.3d 543, 549.) As the Supreme Court of California has noted, “the code does not
3 attempt to specify what or how great that interest shall be in order to give a right to intervene. Any
4 interest is sufficient.” (*Bechtel v. Axelrod* (1942) 20 Cal.2d 390, 392 [*citing Dennis v. Kolm* (1900)
5 131 Cal. 91, 93; *Coffey v. Greenfield* (1880) 55 Cal. 382, 383 [internal citations omitted]). A
6 requestor of public records in a reverse-CPRA action plainly has an interest in the proceedings
7 because “[a] successful reverse-CPRA lawsuit seeking to prevent a public agency from releasing
8 information on the ground the requested disclosure is prohibited by law will necessarily affect the
9 rights of the party requesting the information[.]” (*Marken, supra*, 202 Cal.App.4th at p. 1269-70.)

10 The “transaction” that is the subject of this action is the enactment of SB 1421 and the
11 question of whether it applies to pre-2019 records, in accordance with its plain language and the
12 intent of the Legislature. Intervenor’s have a direct interest in this litigation because the Court’s
13 determination directly affects (and has already directly affected) their right of access to LAPD’s
14 records and their ability to inform the public regarding the information contained in those records—
15 specifically, Intervenor’s ability under the CPRA to access records regarding instances of use of
16 force and confirmed instances serious misconduct by LAPD officers, pursuant to SB 1421.
17 Moreover, as Intervenor’s have made CPRA requests for records at issue in these proceedings, they
18 have a direct interest in these proceedings and therefore should be allowed to intervene.

19 **2. Intervenor’s Ability to Protect Their Interests Will Be Impaired or** 20 **Impeded By the Disposition of This Case in Their Absence**

21 Intervenor’s must also show that they are “so situated that the disposition of the action may
22 impair or impede [their] ability to protect that interest.” (Code Civ. Proc. § 387; *Hodge v.*
23 *Kirkpatrick Dev., Inc.* (2005) 130 Cal.App.4th 540, 555 (*Hodge*)) Once this showing is made, the
24 Court must permit Intervenor’s to intervene unless their interests are “adequately represented by
25 existing parties.” (Code Civ. Proc. § 387; *Hodge, supra*, 130 Cal.App.4th at p. 554–55.) Regardless
26 of whether a respondent might actively oppose a petition to prevent disclosure of public records, a
27 requestor of those public records, like the Intervenor’s in the present matter, “plainly has a stake in
28 the outcome of ... [the] proceedings, and [its] interests generally should be represented” through

1 intervention in the action. (*Marken, supra*, 202 Cal.App.4th at p. 1270.)

2 Because this action will determine the application of SB 1421 to all records of the City of
3 Los Angeles and LAPD, and will in addition determine whether Intervenor's will be able to obtain
4 the records they have requested, Intervenor's interests are directly implicated, and will be impaired
5 by an adverse determination. In fact, LAPPL's preemptive litigation prior to the effective date of
6 SB 1421 has already impacted Intervenor who sought records of police use of force and
7 misconduct related to conduct occurring before January 1, 2019. In addition, the determination of
8 this action will have an ongoing impact on Intervenor, because they regularly request and obtain
9 records under the CPRA, including records of the LAPD, or assist others in doing so.

10 **3. Intervenor's Interests Are Not Adequately Represented By the Existing**
11 **Parties to This Action**

12 A proposed intervenor need only show that the "representation of his interest 'may be'
13 inadequate; and the burden of making that showing should be treated as minimal." (*Trbovich v.*
14 *United Mine Workers of America* (1972) 404 U.S. 528, 538, n.10 [citations omitted, analyzing the
15 required showing for intervention under analogous federal procedure].)¹ Intervenor's interests are
16 directly contrary to those of Petitioner, and clearly are not adequately represented by Respondents.

17 The Respondents cannot adequately represent Intervenor's interests because the
18 Respondents' primary objective is merely to comply with the CPRA, not to vindicate the public's
19 and the press's right of access to government records. In fact, LAPPL's request that SB 1421 not
20 apply to pre-2019 records would reduce the administrative burden on the Respondents, since they
21 would not be required to search and produce records related to conduct occurring before January 1,
22 2019 in response to CPRA requests. Respondent Moore in his official capacity specifically
23 expressed the LAPD's concerns regarding the application of SB 1421 in a letter to Senator Skinner
24 dated December 3, 2018, asserting that it would impose a substantial burden upon the LAPD in
25 responding to CPRA requests. (Petition, Ex. B.) The Respondents' interests are thus not only not
26

27 ¹ Because section 387 was modeled after and is "virtually identical to" Rule 24 of the Federal
28 Rules of Civil Procedure, California courts may look to federal court decisions in interpreting and
applying the statute where there is otherwise no controlling California authority on point. See
Ziani Homeowners Ass'n v. Brookfield Ziani LLC (2015) 243 Cal.App.4th 274, 280-81.

1 opposed to LAPPL's, but appear to be aligned with LAPPL's, at least in some respects.

2 In *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188,
3 for example, the court held that one government subdivision did not adequately represent another
4 subdivision because it could not "be said to have adequately represented *all* the interests of [the
5 other subdivision], even though here its staff agreed with [the position of the other] on the merits."
6 (*Id.* at p. 1198 [emphasis added].) Likewise, the fact that Respondents may oppose LAPPL's
7 request does not mean that their interests are identical to those of the Intervenor, because
8 Respondents' interests include institutional concerns that Intervenor does not have and the
9 Intervenor's interests include the access rights of requesters under the CPRA and the interest of the
10 general public in access to LAPD records and the oversight of public agencies (including the City
11 and LAPD), which Respondents, by virtue of their positions, do not share and cannot adequately
12 assert. Intervenor has a direct interest in protecting and maintaining the right of access to
13 government records to the fullest extent possible. Intervenor thus has unique and important
14 interests in this matter that the parties cannot represent.

15 **4. Intervenor's Motion for Leave to Intervene Is Timely**

16 Intervenor's Motion is timely. Intervention is considered timely if it is "asserted within a
17 reasonable time" and the intervenor is not "guilty of an unreasonable delay" (*Sanders v. Pac.*
18 *Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 668 [permitting intervention 18 months after notice of
19 litigation]; see also *Truck Ins. Exch. v. Superior Court* (1997) 60 Cal.App.4th 342, 351 [finding
20 motion to intervene timely even where filed two years after notice of litigation].) Because
21 Intervenor only learned of LAPPL's filed Petition on or after January 2, 2019, Intervenor's *Ex*
22 *Parte* Application for Leave to Intervene submitted just 16 days later is undoubtedly timely under
23 section 387. (Declaration of Tenaya Rodewald filed herewith ("Rodewald Decl."), ¶ 6.)
24 Accordingly, because Intervenor satisfies all of the requirements of Section 387(d)(1), the Court
25 should permit intervention as of right.

26 **B. In the Alternative, Intervenor Should Be Granted Permission to Intervene**

27 Section 387(d)(2) also authorizes the Court to permit intervention in appropriate
28 circumstances. Section 387(d)(2) states, in relevant part that "[t]he court may, upon timely

1 application, permit a nonparty to intervene in the action or proceeding if the person has an interest
2 in the matter in litigation, or in the success of either of the parties.” (Code Civ. Proc. § 387(d)(2).)
3 Courts have held that “[a] third party may intervene [by permission] (1) where the proposed
4 intervenor has a direct interest, (2) intervention will not enlarge the issues in the litigation, and (3)
5 the reasons for the intervention outweigh any opposition by the present parties.” (*Lindelli v. Town*
6 *of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504 [citations omitted].) “The purpose of allowing
7 intervention is to promote fairness by involving all parties potentially affected by a judgment.”
8 (*Simpson Redwood, supra*, 196 Cal.App.3d at p. 1199 [citations omitted]; see also *City and County*
9 *of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036 [section 387 “balances
10 the interests of others who will be affected by the judgment against the interests of the original
11 parties in pursuing their litigation unburdened by others” [citations omitted]].) As with mandatory
12 intervention, permissive intervention should likewise be liberally construed in favor of intervention.
13 (*Simpson Redwood, supra*, 196 Cal.App.3d at p. 1200.) And as held in *Marken*, a requestor of
14 public records should be permitted to intervene in an action that will determine whether the records
15 will be disclosed. (*Marken, supra*, 202 Cal.App.4th at p. 1269-70.)

16 As demonstrated above, Intervenor has a direct interest in the outcome of this action, and
17 their request for intervention is timely. Intervenor also satisfy all of the requirements for
18 permissive intervention because their presence in this action will not enlarge the issues in the
19 litigation and the reasons for intervention outweigh any opposition by the present parties.
20 Accordingly, should the Court determine that Intervenor is not entitled to intervene as of right,
21 Intervenor respectfully request in the alternative that they be allowed to intervene permissively
22 pursuant to section 387(d)(2).

23 1. Intervenor’s Inclusion Will Not Enlarge the Scope of This Action

24 Courts grant permissive intervention if the intervenor does not seek to unduly delay the
25 litigation or inject new factual issues. (See *Simpson Redwood, supra*, 196 Cal.App.3d at p. 1202–
26 03 [“Resolution of [intervenor’s] issue will center upon essentially the same facts as those involved
27 in the State’s claims . . . [W]e perceive no danger that the [intervenor’s] issue will prolong, confuse
28 or disrupt the present lawsuit.”] [citations omitted]; *People ex rel. Rominger v. County of Trinity*

1 (1983) 147 Cal.App.3d 655, 664-65 (*Rominger*) [finding Sierra Club’s intervention would not
2 impermissibly broaden the scope of the litigation].)

3 Here, Intervenor’s seek to intervene for the purpose of opposing LAPPL’s interpretation of
4 SB 1421. The issues that directly impact Intervenor’s rights—Intervenor’s right to access
5 government records created prior to January 1, 2019—are already directly at the heart of this
6 dispute. Intervenor’s opposition addresses the same issues raised by the Petition and is based on the
7 plain language interpretation of SB 1421 and the statutes it amends along with the same legislative
8 history of SB 1421 that is referred to by Petitioner. Moreover, Intervenor’s are not seeking to alter
9 the current briefing and hearing schedule. Thus, the inclusion of Intervenor’s in this action would
10 not inject new factual issues or unduly delay the litigation.

11 **2. The Reasons for the Intervention Outweigh Any Opposition by the**
12 **Present Parties**

13 Given the magnitude of the rights at issue and the harm that LAPPL’s Petition may cause
14 (and has already caused) to the right of access to public records, the interests in intervention far
15 outweigh any countervailing interests that may be asserted. At stake are Intervenor’s rights and
16 those of the public to information that the California Supreme Court has recognized as being of
17 profound public concern. (See *LBPOA*, *supra*, 59 Cal.4th at pp. 73-74; *POST*, *supra*, 42 Cal.4th at
18 pp. 297-299.) Against this is weighed (if it is entitled to any weight at all) only to Petitioner’s
19 desire to obtain a decision in a proceeding that is effectively unopposed.

20 The separate interests involved in this case are analogous to those in *Rominger*, in which
21 Sierra Club was allowed to intervene in a lawsuit against Trinity County seeking to invalidate
22 county pesticide ordinances. In that case, the county had an institutional interest in defending its
23 jurisdiction to enact ordinances, whereas Sierra Club members, as direct beneficiaries of the
24 ordinances, had unique interests in upholding the ordinances stemming from their concern for their
25 own health and well-being. (*Rominger*, *supra*, 147 Cal.App.3d at p. 665.) Here, as in *Rominger*,
26 Intervenor’s “interest is compelling enough that they should be permitted to intervene.” (*Ibid.*) Like
27 Trinity County in *Rominger*, the County’s primary interest is the institutional concern of responding
28 to CPRA requests. Intervenor’s, as requestors and news media responsible for conveying

1 information on matters of concern to the public, are direct beneficiaries of the amendments to the
2 CPRA enacted in SB 1421 and thus have a profound interest in protecting the public's and the
3 press's right of access to government records controlled by Respondents.

4 **C. In The Alternative, An Order Shortening Time On Application For Leave To**
5 **Intervene Is Appropriate**

6 California Rule of Court, Rule 3.1300 provides that the Court can shorten the time for a
7 motion to be heard and the filing and service of papers. Here, if the Court is not inclined to grant
8 the requested relief on an *ex parte* basis, an order shortening time is appropriate to hear Intervenor's
9 Motion for Leave to Intervene and for filing and service of the corresponding briefs, such that the
10 Motion for Leave to Intervene be heard on February 5, 2019, prior to or contemporaneous with the
11 already-scheduled hearing. Specifically, an order shortening time is appropriate because
12 Intervenor only learned of LAPPL's petition on or after January 2, 2019, Respondents' opposition
13 briefs are due January 22, 2019, and the hearing for LAPPL's Petition is scheduled for February 5,
14 2019. According to Code of Civil Procedure section 1005(b), Intervenor would have had to have
15 served and filed all supporting papers seeking leave to intervene by noticed motion by January 11,
16 2019, only seven court days after learning of LAPPL's petition. (Rodewald Decl., ¶ 6.) Given
17 Intervenor's need to coordinate, engage counsel, and prepare their papers, an earlier application was
18 not possible. (*Id.*) Thus, an order shortening time for Intervenor to apply for leave to intervene on
19 noticed motion is warranted.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Intervenor's intervention in the present action is appropriate
22 under California Code of Civil Procedure section 387(d)(1) and, at the very least, section 387(d)(2).
23 Accordingly, Intervenor respectfully request that the Court grant their *Ex Parte* Application for
24 Leave to Intervene. In the alternative, Intervenor respectfully request an order shortening time on
25 application for leave to intervene.

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Dated: January 17, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



TENAYA RODEWALD

Attorney for FIRST AMENDMENT COALITION, LOS
ANGELES TIMES COMMUNICATIONS LLC,
CALIFORNIA NEWSPAPERS PARTNERSHIP L.P., THE
CENTER FOR INVESTIGATIVE REPORTING, and
CALIFORNIA NEWS PUBLISHERS ASSOCIATION

Exhibit A

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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2 Including Professional Corporations
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8 Attorneys for Intervenors FIRST AMENDMENT COALITION,
LOS ANGELES TIMES COMMUNICATIONS LLC,
9 CALIFORNIA NEWSPAPERS PARTNERSHIP L.P., THE
CENTER FOR INVESTIGATIVE REPORTING, and
10 CALIFORNIA NEWS PUBLISHERS ASSOCIATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 LOS ANGELES POLICE PROTECTIVE
LEAGUE,

15 Petitioner,

16 v.

17 CITY OF LOS ANGELES, a municipal
corporation; MICHEL R. MOORE, Chief of
Police for the City of Los Angeles, and DOES
18 1 through 20, inclusive,

19 Respondents.

Case No. 18STCP03495

**INTERVENORS' [PROPOSED] ANSWER
IN INTERVENTION**

Dept.: 85

[Petition Filed: December 31, 2018]

20 FIRST AMENDMENT COALITION, a
21 California non-profit, public benefit
corporation; LOS ANGELES TIMES
22 COMMUNICATIONS LLC, a Delaware
limited liability company; CALIFORNIA
23 NEWSPAPERS PARTNERSHIP L.P., a
Delaware limited partnership; THE CENTER
24 FOR INVESTIGATIVE REPORTING,
California non-profit, public benefit
25 corporation; and CALIFORNIA NEWS
PUBLISHERS ASSOCIATION, an association
26 of California news organizations,

27 Intervenors.
28

1 Real Parties in Interest and Proposed Intervenor First Amendment Coalition (“FAC”), Los
2 Angeles Times Communications LLC (“LAT”), California Newspapers Partnership L.P. (doing
3 business as the Southern California Newspaper Group or SCNG (“SCNG”) and Bay Area News
4 Group (“BANG”)), The Center for Investigative Reporting, Inc. (“CIR”), and California News
5 Publishers Association (“CNPA”) (collectively, “Intervenors”) file this Answer in Intervention
6 and hereby intervene in this action, alleging as follows:

7 INTRODUCTION

8 1. In 2018, the California Legislature passed and Governor Jerry Brown subsequently
9 signed into law California Senate Bill 1421 (“SB 1421”), enacted as Chapter 988 of the 2017-2018
10 Regular Session. SB 1421, which became effective January 1, 2019, amended two sections of the
11 Penal Code concerning law enforcement personnel records (Sections 832.7 and 832.8). The new
12 law makes records relating to incidents of (A) officer involved shootings and serious uses of force,
13 (B) sustained findings of sexual assault, and (C) sustained findings of serious dishonesty, subject
14 to public disclosure through the California Public Records Act (the “CPRA”). Specifically, the
15 statute now provides:

16 Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code,
17 or any other law, ***the following peace officer or custodial officer personnel records*** and
18 records maintained by any state or local agency ***shall not be confidential and shall be***
made available for public inspection pursuant to the California Public Records Act ...:

19 (A) A record relating to the report, investigation, or findings of ***any*** of the following:

20 (i) An incident involving the discharge of a firearm at a person by a peace officer or
custodial officer.

21 (ii) An incident in which the use of force by a peace officer or custodial officer
22 against a person resulted in death, or in great bodily injury.

23 (B) (i) ***Any*** record relating to an incident in which a sustained finding was made ... that a
24 peace officer or custodial officer engaged in sexual assault involving a member of the
public. ...

25 (C) ***Any*** record relating to an incident in which a sustained finding was made ... of
26 dishonesty by a peace officer or custodial officer directly relating to...” certain things
“including, but not limited to, ***any*** sustained finding of perjury, false statements, filing
false reports, destruction, falsifying, or concealing of evidence.

27 (Penal Code, § 832.7, subd. (b)(1) [emphasis added].) Section 832.7(b)(2) further specifies:
28

1 Records that shall be released pursuant to this subdivision include **all** investigative
2 reports; photographic, audio, and video evidence; transcripts or recordings of
3 interviews; autopsy reports; **all** materials compiled and presented for review to the
4 district attorney or to any person or body charged with determining whether to file
5 criminal charges against an officer in connection with an incident, or whether the
6 officer's action was consistent with law and agency policy for purposes of
7 discipline or administrative action, or what discipline to impose or corrective action
8 to take; documents setting forth findings or recommended findings; and copies of
9 disciplinary records relating to the incident, including any letters of intent to
10 impose discipline, any documents reflecting modifications of discipline due to the
11 Skelly or grievance process, and letters indicating final imposition of discipline or
12 other documentation reflecting implementation of corrective action.

(Penal Code, § 832.7, subd. (b)(2) [emphasis added].)

2. For some years prior to the enactment of SB 1421, such information was available
only through discovery in civil or criminal litigation, pursuant to a motion made in accordance
with Penal Code section 1043.

3. On December 31, 2018, three months after SB 1421 was enacted but just one day
before the bill was scheduled to go into effect, Petitioner Los Angeles Police Protective League
("Petitioner" or "LAPPL") filed a Verified Petition for Writ of Mandate, Alternative Writ of
Mandate, and Request for Stay (the "Petition") in this Court. In its Petition, LAPPL contended
that SB 1421 is "prospective" only, which means, according to the LAPPL, that the law does not
apply to "peace officer personnel records and information regarding incidents or reflecting
conduct occurring prior to January 1, 2019," (referred to herein as "pre-2019 records").
Furthermore, LAPPL contends that applying SB 1421 to pre-2019 records is an impermissible
"retroactive" application of the law. Accordingly, LAPPL sought and was granted an alternative
writ of mandate and stay order directing Respondents City of Los Angeles ("Los Angeles" or
"City"); Michel R. Moore, Chief of Police for the City of Los Angeles ("Moore"); and their
agents, employees, and representatives ("Doe Respondents" and together with City and Moore,
collectively "Respondents") to refrain from "retroactively" enforcing or applying SB 1421 by
releasing any records relating to conduct occurring prior to January 1, 2019 that are otherwise
subject to public disclosure under the CPRA, or to show cause why they have not done so.

4. LAPPL's interpretation of SB 1421 is incorrect. First, the plain language of
California Penal Code section 832.7 and the legislative history of SB 1421 require the application

1 of Penal Code sections 832.7 and 832.7, as amended by SB 1421 (herein after “Sections 832.7 and
2 832.8”), to all records regardless of date. Second, applying Sections 832.7 and 832.8 to pre-2019
3 records does not constitute an impermissible “retroactive” application of the law.

4 5. Intervenors have a direct interest in these proceedings and their outcome. FAC has
5 an interest as a result of its support for the passage of SB 1421 and its mission to promote
6 government accountability, prevent unnecessary governmental secrecy, and ensure enforcement of
7 open records laws for the benefit of the public. CNPA has a similar interest, as a principal
8 advocate for passage of SB 1421 and as an organization created to champion the ideals of a free
9 press in our democratic society and to promote the quality and economic health of California news
10 publishers. The public has a particularly strong interest in enforcing its right to access to the
11 records covered by SB 1421 because they concern the conduct of law enforcement officers. (See
12 *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 74 (*LBPOA*)
13 [explaining that in cases concerning officer-involved shootings, “the public’s interest in the
14 conduct of its peace officers is particularly great because such shootings often lead to severe injury
15 or death” and the balance of interests therefore “tips strongly in favor of identity disclosure and
16 against the personal privacy interests of the officers involved”].) LAT, SCNG, BANG and CIR,
17 as news media organizations committed to reporting on matters of great public interest, have an
18 interest in their ability to access this information so that they may accurately report on instances of
19 police-involved shootings, use of force, and misconduct, and thereby serve the public interest in
20 ensuring public oversight and accountability of law enforcement.

21 6. Moreover, FAC, LAT, SCNG, and CIR all submitted California Public Records
22 Act (“CPRA”) requests to Respondents seeking records containing information subject to
23 disclosure under Penal Code section 832.7(b) (as amended by SB 1421). Most of these requests
24 have been denied citing the Court’s December 31, 2018, temporary stay order prohibiting the
25 disclosure of pre-2019 records, while two requests are still pending.

26 7. Intervenors propose to intervene in order to oppose the Petition and to request that
27 this Court find and determine that Sections 832.7 and 832.8 apply pre-2019 records.
28

1 **THE PARTIES**

2 8. FAC is a nonprofit public benefit corporation organized under the laws of
3 California. Since FAC was established in April 1988, and at all times relevant to this Answer in
4 Intervention, one of FAC's primary purposes has been the advancement of the public's right to
5 participate in government and to have access to information regarding the conduct of the people's
6 business. FAC has advanced this purpose by working to improve governmental compliance with
7 state and federal open government laws. The public has a particularly strong interest in disclosure
8 of the type of records that SB 1421 addresses—records concerning use of deadly or serious force
9 or regarding serious misconduct by law enforcement officers. (See *LBPOA*, *supra*, 59 Cal.4th at
10 p. 74.) FAC is beneficially interested in ensuring that public agencies throughout the state,
11 including the City of Los Angeles and LAPD, faithfully comply with their legal duties to disclose
12 such records under the new SB 1421, as well as under Section 3 of Article I of the California
13 Constitution and California common law. As explained further herein, FAC submitted a CPRA
14 request to Respondents seeking pre-2019 records subject to disclosure under Penal Code section
15 832.7(b) (as amended by SB 1421). FAC's request is still pending.

16 9. CNPA is a nonprofit public benefit corporation organized under the laws of
17 California. For over 130 years and at all times relevant to this Answer in Intervention, CNPA's
18 mission has been to champion the ideals of a free press in our democratic society and protect the
19 interests of newspapers throughout the state, from the smallest weekly to the largest metropolitan
20 daily. Toward this end, CNPA was a co-sponsor of SB 1421, working closely with Senator
21 Skinner, the author of the bill, to draft amendments, negotiate language with stakeholders and
22 helping to shepherd the bill as it progressed through the legislative process. CNPA members use
23 the CPRA on a daily basis to access and provide to readers information about government actions
24 and decisions made by government officials in their communities. CNPA members also use this
25 information to independently investigate the conduct of agencies to identify instances of potential
26 malfeasance or corruption by government officials. Since most members of the public are unable
27 to engage in these activities themselves, CNPA members serve in the role of a public trust. In
28 light of recent developments where the relationship between law enforcement and members of the

1 public has been the focus of vigorous public discussion, the public and newspapers have an
2 exceedingly strong interest in disclosure of records concerning serious, sustained findings of
3 misconduct by law enforcement officers. CNPA has a significant interest in ensuring that the
4 intent of SB 1421 is faithfully executed by public agencies throughout the state and the public's
5 right of access to the information governed by SB 1421 as well as under Section 3 of Article I of
6 the California Constitution and California common law is not diminished.

7 10. LAT is the largest daily newspaper based in California. LAT's popular news and
8 information website, www.latimes.com, attracts a national audience. In order to ensure its ability
9 to effectively report on matters of vital public interest, LAT regularly joins litigation defending the
10 public's rights of access to government records and meetings. Before the Supreme Court of
11 California, LAT vindicated the public's rights of access to the names of police officers
12 (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278
13 (*POST*)) and the names of most officers involved in shootings in California (*LBPOA, supra*, 59
14 Cal.4th 59). In recent years, LAT also ensured public access to a consultant's report on the
15 shooting by Pasadena police of an unarmed teenager (*Pasadena Police Officers Assn. v. City of*
16 *Pasadena* (2015) 240 Cal.App.4th 268) and the names of officers who pepper sprayed student
17 protesters at the University of California, Davis (*Federated University Police Officers Assn. v.*
18 *Superior Court* (2013) 218 Cal.App.4th 18). As part of these cases, the Supreme Court of
19 California has recognized that the "public's interest in the qualifications and conduct of peace
20 officers is substantial" (*POST, supra*, 42 Cal.4th at p. 297-299) and that "officers hold one of the
21 most powerful positions in our society; our dependence on them is high and the potential for abuse
22 of power is far from insignificant" (*LBPOA, supra*, 59 Cal.4th at p. 73) (internal citation
23 omitted)). These statements have particular resonance in this litigation concerning access to police
24 disciplinary records in the possession of the City of Los Angeles and the LAPD. Because LAT
25 reports on the City of Los Angeles, LAT has a concrete interest in ensuring public access to all
26 disclosable disciplinary records controlled by Respondents, including pre-2019 records. As
27 explained further herein, LAT submitted CPRA requests to Respondents seeking pre-2019 records
28 subject to disclosure under Penal Code section 832.7(b) (as amended by SB 1421). Respondents

1 denied LAT's requests citing the Court's December 31, 2018, temporary stay order prohibiting the
2 disclosure of pre-2019 records.

3 11. The California Newspapers Partnership is a Delaware Limited Partnership, which
4 operates both the Bay Area News Group ("BANG") and the Southern California News Group
5 ("SCNG"). BANG is a news organization that publishes two daily newspapers, The Mercury
6 News, based in San Jose, and the East Bay Times, based in Oakland and Walnut Creek, as well as
7 more than a dozen weekly newspapers. The organization's websites, mercurynews.com and
8 eastbaytimes.com, attract more than half a million visitors daily. BANG regularly pursues
9 litigation defending the public's right of access to government records and meetings. Its work
10 relies heavily on the use of the California Public Records Act, and it has a longstanding interest in
11 putting a spotlight on the inner workings of law enforcement, having produced the award-winning
12 series Tainted Trials, Stolen Justice, which examined misconduct in the justice system in Santa
13 Clara County. BANG, as a major news organization in California, has a strong interest in
14 obtaining information made public by SB 1421. On January 6, the news organization published
15 one of the first stories in the state using records made available by the new law. BANG's
16 reporting detailed the history of a Burlingame police officer who sought to force women he
17 arrested to trade sex for leniency. After the publication of the article, the San Mateo District
18 Attorney expressed surprise that the officer had been accused of multiple incidents of such
19 behavior, saying the DA's office had been informed of only one, and announced it would consider
20 reopening an earlier investigation of the officer. Given this, BANG has a direct interest in
21 bringing similar stories to light in Los Angeles.

22 12. SCNG publishes eleven daily newspapers, 20 weeklies and four magazines in one
23 of the world's largest metro areas. From Long Beach to the San Fernando and San Gabriel
24 Valleys, to the beaches of Orange County to the vast Inland Empire, SCNG's newspapers,
25 including The Orange County Register, The Press-Enterprise, Los Angeles Daily News and Long
26 Beach Press-Telegram, have a long and well-established history of service to their communities.
27 Each of the newspapers comprising the Southern California News Group maintains a large and
28 loyal subscriber base of readers who are well-served by SCNG's diligent public interest and

1 investigative journalism. SCNG's publications have been recognized by state and national
2 organizations for breaking news, public service, and investigative reporting, including a Pulitzer
3 prize for local reporting for the Daily Breeze in 2015. As explained further herein, SCNG
4 submitted a CPRA request to Respondents seeking pre-2019 records subject to disclosure under
5 Penal Code section 832.7(b) (as amended by SB 1421). Respondents denied SCNG's request
6 citing the Court's December 31, 2018, temporary stay order prohibiting the disclosure of pre-2019
7 records.

8 13. CIR, a California non-profit, public benefit corporation founded in 1977, is the
9 nation's first nonprofit investigative newsroom. CIR produces investigative journalism for its
10 website Reveal, <https://www.revealnews.org>, the Reveal national public radio show and podcast,
11 and various documentary projects. CIR is deeply committed to ensuring that the public's right to
12 know is well-protected. It consistently pursues this mission by reporting on matters of public
13 importance, regularly using public records laws around the country to accomplish its reporting,
14 and joining initiatives that support the public's right. CIR is therefore squarely interested in
15 ensuring that SB 1421 is correctly applied by requiring that public agencies follow through on
16 their obligations to disclose information. More specifically as to the subject matter of the statute,
17 CIR regularly reports on information related to police misconduct, law enforcement's use of
18 deadly force, uneven application of the law by police, as well as internal corruption, all of which
19 may become more transparent under the application of this new law. As explained further herein,
20 CIR submitted a CPRA request to Respondents seeking pre-2019 records subject to disclosure
21 under Penal Code section 832.7(b) (as amended by SB 1421). Respondents have not yet
22 responded to CIR's request.

23 14. LAPPL alleges in the Petition that it is an employee organization as defined in
24 Government Code section 3500 et seq., recognized to represent all police officers, police
25 detectives, sergeants and lieutenants employed by the City with regard to all matters concerning
26 wages, hours and working conditions. LAPPL further alleges that its represented employees are
27 peace officers as defined in Penal Code sections 830.1.

28 15. The City is a municipal corporation operating under the laws of the

1 State of California. LAPPL alleges in the Petition that the City was, at all relevant times, a local
2 employing agency within the meaning of Penal Code section 832.5 et seq. maintaining peace
3 officer personnel information, as well as a local agency within the meaning of the CPRA,
4 Government Code section 6252.

5 16. Moore is, and at all relevant times was, the Chief of Police for the City of Los
6 Angeles. LAPPL alleges in the Petition that Moore is charged with the general supervision,
7 administration and management of the LAPD.

8 17. LAPPL alleges that Doe Respondents were at all relevant times the agents, servants
9 and employees of Respondent City acting within the scope of their authority with the permission
10 and consent of the City.

11 JURISDICTION

12 18. This Court has original jurisdiction over this matter pursuant to the California
13 Constitution article VI, section 10 and California Code of Civil Procedure sections 387 and 1085.

14 FACTUAL ALLEGATIONS

15 19. Recognizing the public's right to information about serious police
16 misconduct, officer-involved shootings, and other serious uses of force by law enforcement
17 officers, in 2018 the California Legislature passed, and former Governor Jerry Brown signed into
18 law SB 1421. The new law expands access to certain records by making records relating to
19 incidents of (A) officer involved shootings and serious uses of force, (B) sustained findings of
20 sexual assault, and (C) sustained findings of serious dishonesty, subject to public disclosure
21 through the California Public Records Act (the "CPRA"). Specifically, the statute now provides:

22 Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code,
23 or any other law, ***the following peace officer or custodial officer personnel records*** and
24 records maintained by any state or local agency ***shall not be confidential and shall be***
made available for public inspection pursuant to the California Public Records Act ...:

25 (A) A record relating to the report, investigation, or findings of ***any*** of the following:

26 (i) An incident involving the discharge of a firearm at a person by a peace officer or
custodial officer.

27 (ii) An incident in which the use of force by a peace officer or custodial officer
28 against a person resulted in death, or in great bodily injury.

1 (B) (i) **Any** record relating to an incident in which a sustained finding was made ... that a
2 peace officer or custodial officer engaged in sexual assault involving a member of the
public. ...

3 (C) **Any** record relating to an incident in which a sustained finding was made ... of
4 dishonesty by a peace officer or custodial officer directly relating to..." certain things
"including, but not limited to, **any** sustained finding of perjury, false statements, filing
5 false reports, destruction, falsifying, or concealing of evidence.

6 (Penal Code, § 832.7, subd. (b)(1) [emphasis added].) Section 832.7(b)(2) further specifies:

7 Records that shall be released pursuant to this subdivision include **all** investigative
8 reports; photographic, audio, and video evidence; transcripts or recordings of
9 interviews; autopsy reports; **all** materials compiled and presented for review to the
district attorney or to any person or body charged with determining whether to file
10 criminal charges against an officer in connection with an incident, or whether the
officer's action was consistent with law and agency policy for purposes of
11 discipline or administrative action, or what discipline to impose or corrective action
to take; documents setting forth findings or recommended findings; and copies of
12 disciplinary records relating to the incident, including any letters of intent to
impose discipline, any documents reflecting modifications of discipline due to the
Skelly or grievance process, and letters indicating final imposition of discipline or
other documentation reflecting implementation of corrective action.

13 (Penal Code, § 832.7, subd. (b)(2) [emphasis added].)

14 20. The declaration of intent in SB 1421 reflects the Legislature's findings that the
15 public has a particularly strong interest in disclosure of records concerning police misconduct and
16 officer-involved shootings:

17 (a) Peace officers help to provide one of our state's most fundamental
18 government services. To empower peace officers to fulfill their
mission, the people of California vest them with extraordinary authority
19 — the powers to detain, search, arrest, and use deadly force. Our society
depends on peace officers' faithful exercise of that authority. Misuse of
20 that authority can lead to grave constitutional violations, harms to
liberty and the inherent sanctity of human life, as well as significant
public unrest.

21 (b) The public has a right to know all about serious police misconduct, as
22 well as about officer-involved shootings and other serious uses of force.
Concealing crucial public safety matters such as officer violations of
23 civilians' rights, or inquiries into deadly use of force incidents,
undercuts the public's faith in the legitimacy of law enforcement,
24 makes it harder for tens of thousands of hardworking peace officers to
do their jobs, and endangers public safety.

25 (SB 1421, § 1.)
26

27 21. SB 1421 also provides limited exceptions to public disclosure. It excepts from
28 disclosure certain personal data including home addresses, telephone numbers, and allows

1 government agencies to redact the identities of officers' family members. Government agencies
2 may also withhold records when disclosure would pose a significant danger to the officer in
3 question or hinder an ongoing investigation.

4 22. SB 1421 was passed on August 31, 2018, signed by former Governor Brown on
5 September 30, 2018, and enacted as Chapter 988 of the 2017-2018 Regular Session. It amended
6 Penal Code sections 832.7 and 832.8 and became effective on January 1, 2019.

7 23. On December 31, 2018, LAPPL filed a petition with this Court (the "Petition")
8 seeking a determination that SB 1421 and Penal Code sections 832.7 and 832.8, as amended by
9 SB 1421, is not applicable to "peace officer personnel records and information regarding incidents
10 or reflecting conduct occurring prior to January 1, 2019," and a preemptory writ of mandate
11 prohibiting the disclosure of such records. LAPPL also asked the Court to issue an alternative writ
12 of mandate and an immediate order staying or enjoining any release of pre-2019 records during
13 the pendency of these proceedings, which the Court granted on December 31, 2018. In its
14 Petition, LAPPL alleged that Moore, in his official capacity, wrote a letter to Senator Nancy
15 Skinner on December 3, 2018, expressing concern that SB 1421 might be interpreted as
16 "retroactive," and if applied in a retroactive manner would impose an unreasonable burden on
17 LAPD. LAPPL also alleged that the LAPD had confirmed in a letter dated December 26, 2018,
18 that absent a stay or other ruling from the California Supreme Court or another court of competent
19 jurisdiction, it intended to apply SB 1421 to pre-2019 records by making the following types of
20 records, including pre-2019 records, available by public records request beginning on January 1,
21 2019: records regarding officer-involved shootings, records regarding officers' use of force
22 resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty
23 committed by peace officers.

24 24. LAPPL's Petition contends that police officers hold a protected right to privacy in
25 the information contained in their pre-2019 personnel files and agency records regarding pre-2019
26 incidents despite the enactment of SB 1421. LAPPL further contends that SB 1421 does not
27 contain any express provision or language "requiring retroactivity" or any clear indication that the
28 Legislature intended the statute to operate "retroactively," which LAPPL defines as application to

1 peace officer personnel records and information which arose out of incidents involving peace
2 officer conduct occurring prior to January 1, 2019. LAPPL therefore contends that the Court
3 should hold that SB 1421 does not permit disclosure of “peace officer personnel records and
4 information regarding incidents or reflecting conduct occurring prior to January 1, 2019” under the
5 CPRA.

6 25. Intervenors have strong and direct interests in intervening in this proceeding to
7 prevent LAPPL from obtaining a final writ of mandate by this Court that would prevent the
8 disclosure of information subject to SB 1421 by a CPRA request, including records and
9 information regarding incidents or reflecting conduct occurring prior to January 1, 2019, and to
10 ensure that the Respondents and their agents appropriately enforce and comply with Sections
11 832.7 and 832.8.

12 26. FAC is a nonprofit public benefit corporation dedicated to advancing the public’s
13 right to participate in government and access information regarding the conduct of the people’s
14 business. The public has a particularly strong interest in accessing public records concerning
15 serious misconduct and uses of force by law enforcement officers, and FAC is interested in
16 promoting laws and policies that increase public access to such information.

17 27. FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an open letter
18 to Senator Nancy Skinner, the bill’s author, expressing its strong support of SB 1421. That same
19 day, FAC posted the letter on its website, urging others to also support the bill. FAC is listed in
20 the official legislative analyses among the organizations that publicly supported SB 1421. FAC’s
21 support of SB 1421 reflects its mission to advance transparency and accountability of government
22 and government employees, including law enforcement officers, and to prevent government
23 secrecy and censorship. Moreover, on January 10, 2019, FAC submitted a CPRA request, through
24 the LAPD’s online public records request portal, by email and by letter delivered via U.S. mail to
25 Moore, for LAPD records from 2017 and 2018 that contain information subject to SB 1421. Todd
26 Gaydowski of the City Clerk’s Office responded to this request by email on January 10, 2019,
27 claiming that the 2017 and 2018 police records had not been transferred to the City Records
28 Center yet, and that FAC must submit its request through LAPD’s online public records request

1 portal to receive a necessary release of the records from LAPD. As noted, FAC had submitted its
2 request via the online portal. As of January 16, 2019, Respondents had failed to produce the
3 requested records pursuant to the CPRA and SB 1421.

4 28. CNPA was a co-sponsor of SB 1421 from its inception. CNPA's arguments in
5 support of SB 1421 are expressly referenced and quoted in the legislative history of the bill. SB
6 1421 provides public access to records vital to the mission of CNPA's members in providing
7 information that is, as the Supreme Court of California has recognized, necessary to inform the
8 public on matters of vital and legitimate public concern. If Penal Code section 832.7 (as amended
9 by SB 1421) is interpreted to prohibit the disclosure of records relating to incidents or conduct
10 before January 1, 2019, this would severely limit CNPA members' ability to investigate and report
11 stories of serious police misconduct, shootings and serious uses of force.

12 29. As a major news organization in California, and as a media organization that
13 regularly reports on the LAPD, LAT has a direct interest in ensuring public access to the
14 information and reports addressed by SB 1421, including records relating to incidents occurring
15 before January 1, 2019, so that it may report on matters of public interest in Los Angeles regarding
16 police misconduct and uses of deadly force by peace officers.

17 30. On January 1, 2019, LAT submitted two CPRA requests to LAPD via email and
18 the City's online portal. One request sought electronic records of incidents subject to SB 1421 for
19 all current and former sworn officers employed by LAPD, and the other request sought letters of
20 discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed
21 by LAPD relating to reports, investigations, or findings from incidents covered by SB 1421. On
22 January 10, 2019, the LAPD responded stating that Respondents are prohibited from disclosing or
23 providing any records relating to incidents occurring before January 1, 2019, due to the Court's
24 December 31, 2018 temporary stay Order in these proceedings prohibiting the City from applying
25 Penal Code sections 832.7 and 832.8 (as modified by SB 1421) "in any manner which would
26 result in the disclosure or production of peace officer personnel records and information regarding
27 incidents or reflecting conduct occurring prior to January 1, 2019."
28

1 31. On January 1, 2019, the LAT also submitted a CPRA request to the Los Angeles
2 Port Police seeking letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and
3 former sworn officers employed by LAPD relating to reports, investigations, or findings from
4 incidents covered by SB 1421. Thomas E. Gazsi, Chief of Police for the Los Angeles Port Police,
5 responded to LAT's CPRA request on January 8, 2019, stating that it was prohibited from
6 disclosing or providing any records relating to incidents occurring before January 1, 2019, due to
7 the Court's December 31, 2018 temporary stay Order in these proceedings prohibiting the City
8 from applying Penal Code sections 832.7 and 832.8 (as modified by SB 1421) "in any manner
9 which would result in the disclosure or production of peace officer personnel records and
10 information regarding incidents or reflecting conduct occurring prior to January 1, 2019."

11 32. As a major news content provider in the five-county Los Angeles metropolitan
12 area, regularly engaged in reporting on LAPD, SCNG has a direct interest in obtaining access to
13 LAPD records addressed by SB 1421, including records relating to incidents occurring before
14 January 1, 2019, so that it can provide readers with the best local news coverage in the Los
15 Angeles area.

16 33. Moreover, SCNG has a direct interest in these proceedings because on January 1,
17 2019, it submitted a CPRA request to LAPD for records of the LAPD officer-involved shootings
18 of Ezell Ford, Elizabeth Tollison, and Eric Rivera, which occurred before January 1, 2019. On
19 January 10, 2019, the LAPD's CPRA Unit responded to SCNG's request via email that it was
20 prohibited from disclosing or providing any records relating to incidents occurring before January
21 1, 2019, due to the Court's December 31, 2018 temporary stay Order in these proceedings
22 prohibiting the City from applying Penal Code sections 832.7 and 832.8 (as modified by SB 1421)
23 "in any manner which would result in the disclosure or production of peace officer personnel
24 records and information regarding incidents or reflecting conduct occurring prior to January 1,
25 2019."

26 34. As one of the nation's longest operating and most prominent nonprofit investigative
27 journalism organizations, CIR is dedicated to holding the government accountable and revealing
28 threats to public safety through the dissemination and publication of information and news in the

1 public's interest. As such, CIR has a strong interest in obtaining access to the information and
2 records addressed under SB 1421 regarding serious police misconduct and use of deadly force by
3 peace officers, including records relating to incidents occurring before January 1, 2019. CIR has a
4 direct interest in ensuring its access to these records so that it can publicly report on these matters
5 of public interest.

6 35. Additionally, CIR has a direct interest in this action because on January 14, 2019,
7 CIR submitted a CPRA request to the LAPD seeking records relating to (1) any incidents in 2018
8 involving the discharge of a firearm at a person by a peace officer or custodial officer; (2) any
9 incidents in 2018 in which the use of force by a peace officer or custodial officer against a person
10 resulted in death or in great bodily injury; and (3) any incidents in 2018 in which a sustained
11 finding was made by any law enforcement agency or oversight agency that a peace officer or
12 custodial officer engaged in sexual assault involving a member of the public. As of the date of
13 this filing, CIR had not received a response from Respondents.

14 **THE INTERVENORS' HAVE THE RIGHT TO INTERVENE, OR PERMISSIVE**
15 **INTERVENTION IS WARRANTED, SO THEIR EX PARTE APPLICATION FOR**
LEAVE TO INTERVENE SHOULD BE GRANTED

16 36. Intervenor incorporate by reference paragraphs 1 through 35 above.

17 37. Intervenor are entitled to intervene by right, pursuant to Code of Civil Procedure
18 section 387, subdivision (d)(1), because they have an interest relating to the property or transaction
19 that is the subject of the pending Petition, their ability to protect that interest may be impaired or
20 impeded by the disposition of the Petition, their interests are not adequately represented (if they
21 are represented at all) by the existing parties, and the Intervenor's application is timely

22 38. To the extent Intervenor are not entitled to intervene by right, they should be
23 permitted to intervene pursuant to Code of Civil Procedure section 387, subdivision (d)(2) because
24 they have direct and significant interests in this action, their inclusion will not enlarge the scope of
25 this lawsuit, their need to intervene outweighs the current parties' right to litigate on their own
26 terms, and they have made timely application to intervene.

27 39. Intervenor have a direct interest in the subject of this action, because they have a
28 vital interest in ensuring that Respondents faithfully enforce Sections 832.7 and 832.8 by making

1 all public records described in SB 1421, including records relating to incidents occurring before
2 January 1, 2019, available for review by the public through the CPRA.

3 40. One of FAC's missions is advancing the public's right to participate in government
4 and access information regarding the conduct of the people's business, including information
5 regarding serious misconduct and uses of force by LAPD officers. FAC also has a particular
6 interest in ensuring that Respondents enforce and comply with Sections 832.7 and 832.8 because
7 FAC actively supported SB 1421 when the bill was in the California Legislature. As a co-sponsor
8 of SB 1421 and as the principal association serving newspapers throughout the State of California,
9 CNPA also has a direct interest in ensuring appropriate and meaningful application and
10 enforcement of Sections 832.7 and 832.8.

11 41. LAT, SCNG, BANG and CIR each have an interest in ensuring their ability to fully
12 and accurately report on matters of public interest and concern regarding the City of Los Angeles
13 by having access to the information and reports that SB 1421 addresses, including records relating
14 to incidents occurring before January 1, 2019. Moreover, LAT has a demonstrated interest in SB
15 1421 given its involvement in several cases involving the public's right to access information
16 regarding police misconduct and use of deadly force.

17 42. LAT, SCNG, FAC, and CIR further have a direct interest in intervening given their
18 pending and denied requests for access to records, including records relating to incidents occurring
19 before January 1, 2019, subject to disclosure under SB 1421.

20 43. Intervenors' ability to protect these interests will be impaired, and indeed will be
21 largely eviscerated, by an adverse determination of the Petition. If the LAPPL's position is
22 adopted and enforced, Intervenors will be deprived of access to records of great public interest and
23 concern, and will be denied access to records they have already requested.

24 44. Intervenors' interests are not and will not be adequately represented by any of the
25 existing parties. Petitioner is pursuing a position and relief directly adverse to those of the
26 Intervenors. Respondents, the City of Los Angeles and Chief of Police Michel Moore, cannot
27 adequately represent Intervenors' interest because their primary objective is to comply with the
28 CPRA, not to vindicate the public's and the press's right of access to government records. In fact,

1 Petitioner's request that SB 1421 apply only to records of conduct occurring after January 1, 2019
2 would reduce the administrative burden on the Respondents, as they would not be required to
3 provide records related to conduct occurring before January 1, 2019 in response to Public Records
4 Act requests. Moreover, in similar actions (including a nearly identical petition brought in the
5 California Supreme Court by counsel for Petitioners on behalf of another law enforcement union),
6 the Respondents have not opposed the petitions. Thus, Respondents interests are not directly
7 opposed to Petitioner's and may even be aligned with Petitioner's. Respondents therefore cannot
8 adequately represent the interests of the Intervenor.

9 45. Intervention by the Intervenor will not enlarge the scope of this lawsuit, because
10 the only relief sought by the Intervenor is the denial of the Petition and a determination of the
11 issue presented by the Petition, i.e. whether the amendments enacted by SB 1421 provide the
12 public with a right of access to records of incidents and conduct occurring prior to January 1,
13 2019. Permitting Intervenor to participate will not inject new factual issues, because the issues
14 presented by the Petition are questions of law, to be determined based on the basis of the language
15 of the statutory amendments and, if necessary, the legislative history of the amendments. In
16 addition, permitting intervention need not delay the proceedings, and Intervenor seek leave to
17 intervene in a manner that will preserve the briefing and hearing schedule previously established
18 by the Court.

19 46. Intervenor's need to intervene outweighs the current parties' right to litigate on
20 their own terms. Intervenor seek to enforce and vindicate not only their own rights, but the rights
21 of the public generally to access to the records intended by the Legislature to be made public
22 through the enactment of SB 1421. The records at issue contain information that the California
23 Supreme Court has recognized as being of profound public importance and concern. (*POST*,
24 *supra*, 42 Cal.4th at p. 297-299; *LBPOA*, *supra*, 59 Cal.4th at p. 73.) Moreover, the "terms" on
25 which Petitioner seeks to litigate the question presented the Petition are fundamentally inequitable.
26 It is likely that in the absence of the participation of the Intervenor the Petition will go
27 unopposed, and thus that a question of profound public concern will be resolved in a proceeding
28 that provides no opportunity for the consideration of opposing authority, evidence, or argument.

1 This is obviously precisely what Petitioner seeks. Its efforts to avoid meaningful consideration of
2 the merits of the Petition warrant no consideration in determining whether intervention is
3 warranted.

4 47. Intervention is timely, particularly given that Petitioners provided no notice to the
5 Intervenors of this action, despite the fact that it was filed after some of the present Intervenors
6 had filed a motion for leave to intervene in the Supreme Court action filed by counsel for
7 Petitioner. Intervenors have acted as promptly as possible, have not in any way delayed their
8 effort to intervene, and seek to intervene in a manner that will preserve the briefing and hearing
9 schedule established by the Court. Thus, the application for intervention is timely.

10 48. Intervenors therefore respectfully request that this Court grant their *Ex Parte*
11 Application for Leave to Intervene.

12 **IN THE ALTERNATIVE, THE COURT SHOULD GRANT INTERVENORS' EX PARTE**
13 **APPLICATION FOR SHORTENING TIME FOR LEAVE TO INTERVENE**

14 49. Intervenors incorporate by reference paragraphs 1 through 48 above.

15 50. Although they had months to pursue the resolution of the question presented by the
16 Petition, Petitioner did not file it until December 31, 2018. Intervenors only learned of LAPPL's
17 Petition on or after January 2, 2019. Respondents' opposition briefs are due January 22, 2019, and
18 the hearing for LAPPL's Petition is scheduled for February 5, 2019.

19 51. In order to present a noticed motion for leave to intervene in accordance with Code
20 of Civil Procedure section 1005(b), Intervenors would have had to have served and filed all
21 supporting papers seeking leave to intervene by January 11, 2019, only seven court days after
22 learning of LAPPL's petition. Given Intervenors need to coordinate their participation in this
23 application, to engage counsel, and to adequately prepare their papers, an earlier presentation of
24 this application was not possible.

25 52. Thus, if this court does not grant Intervenors' *Ex Parte* Application for Leave to
26 Intervene, it should, in the alternative, issue an order shortening time for Intervenors to apply for
27 leave to intervene by noticed motion.

1 **THE PETITION SHOULD BE DENIED BECAUSE SB 1421 WAS INTENDED**
2 **TO APPLY TO PRE-2019 RECORDS, AND ITS APPLICATION TO THOSE**
3 **RECORDS IS CONSISTENT WITH CALIFORNIA LAW**

3 53. Intervenors incorporate by reference paragraphs 1 through 52 above.

4 54. LAPPL contends that SB 1421 cannot and should not apply “retroactively” to
5 records and conduct pre-dating January 1, 2019 because it alleges that peace officers hold a vested
6 right to privacy and confidentiality in this information.

7 55. The plain language of Penal Code sections 832.7 and 832.8, as well as SB 1421 and
8 the CPRA, however, make clear that the law applies to any and all records containing information
9 delineated in SB 1421, regardless of when the records were created or the conduct occurred.

10 56. In addition, the Legislature intended SB 1421 to apply broadly to records and files
11 regarding peace officer conduct regardless of when the conduct occurred or when the records were
12 created. First, the Legislature did not impose any temporal restrictions to the records to which SB
13 1421 applies despite its understanding, as shown in the legislative history, that the CPRA defines
14 records broadly as either subject to access or exempt from disclosure, and without temporal
15 limitation except in the case of Governor’s office records. Second, the legislative history shows
16 that the Legislature recognized from the outset that SB 1421 would apply to pre-2019 records and
17 passed it with that understanding. Third, the Legislature passed SB 1421 in the context of public
18 debate regarding access to information on police misconduct and use of force, and the legislative
19 history specifically refers to incidents in which members of the public were thwarted from
20 obtaining meaningful information regarding past incidents and investigations of use of force by
21 police—information that would not be available if the Legislation does not apply to pre-2019
22 records.

23 57. SB 1421 and Sections 832.7 and 832.8, moreover, do not affect any vested rights
24 because peace officers have never had a constitutional or statutory right to maintain the
25 confidentiality of the information regarding use of force or sustained findings of serious
26 misconduct or sexual assault contained in personnel files. Rather than creating an unconditional
27 right of privacy or confidentiality to this information, Sections 832.7 and 832.8, prior to
28 amendment, merely provided procedural protections governing the disclosure of personnel

1 records. Such information has always been subject to disclosure in criminal and civil litigation by
2 way of Evidence Code sections 1043 and 1045. The amendments to Penal Code sections 832.7
3 and 832.8 resulting from the enactment of SB 1421 simply expand procedures that can be utilized
4 to obtain and disclose certain categories of information by allowing disclosure through CPRA
5 requests in addition to litigation discovery requests and orders.

6 58. Preventing the application of SB 1421 and Sections 832.7 and 832.8 to records
7 regarding incidents or reflecting conduct occurring prior to January 1, 2019 would severely erode
8 the purpose of SB 1421, which is to promote the public's right to know about all serious police
9 misconduct, officer-involved shootings, and other serious uses of force by police, in contravention
10 of the plain language of the amendments to Sections 832.7 and 832.8 and in contravention of the
11 intent of the Legislature. Thus, LAPPL's Petition is without merit and should be denied.

12 **THE COURT SHOULD MAKE A DETERMINATION THAT THE**
13 **AMENDMENTS ENACTED BY SB 1421 APPLY TO PRE-2019 RECORDS**

14 59. Intervenor incorporate by reference paragraphs 1 through 58 above.

15 60. Intervenor LAT and SCNG have requested and been denied access to pre-2019
16 records pursuant to SB 1421 and the CPRA by Respondents, Intervenor FAC and CIR have not
17 received any substantive response to their CPRA requests for such documents. The denial of
18 access to these records conflicts with the application of SB 1421 and violates the CPRA.
19 According to Sections 832.7 and 832.8 and the CPRA, all public records containing information
20 regarding officer-involved shootings, uses of deadly force by a peace officer, and sustained
21 findings of sexual assault or serious misconduct by a peace officer must be disclosed upon request,
22 subject to limited exceptions. Intervenor therefore respectfully request that this Court make a
23 determination that SB 1421 and Sections 832.7 and 832.8 apply to pre-2019 records.

24 **RELIEF SOUGHT**

25 WHEREFORE, FAC, LAT, CIR, BANG, SCNG, and CNPA pray for judgment as
26 follows:

27 1. For an Order GRANTING Intervenor's *Ex Parte* Application for Leave to
28 Intervene and permitting filing of this Answer in Intervention and Intervenor's Opposition to

1 Petition for Writ of Mandate, or in the Alternative, Shortening Time on Intervenor's Application
2 for Leave to Intervene;

3 2. For an Order DENYING LAPPL's Petition and refusing to issue the writ of
4 mandate sought by LAPPL;

5 3. For an Order VACATING the stay Ordered by the Court on December 31, 2018;

6 4. For a declarations that SB 1421 and California Penal Code sections 832.7 and
7 832.8, as amended by SB 1421, apply to records created before January 1, 2019 and records
8 regarding incidents or reflecting conduct occurring prior to January 1, 2019;

9 5. For costs and attorneys' fees as permitted by Government Code section 6259 or
10 Code of Civil Procedure section 1021.5 or as otherwise provided for by law;

11 6. For judgment accordingly; and

12 7. For such other relief as the Court deems just.

13 Dated: January 17, 2019

14 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

15
16 By

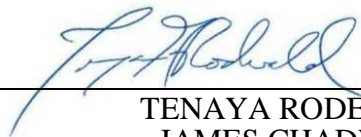

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Exhibit B

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THE CENTER FOR INVESTIGATIVE REPORTING, and
10 CALIFORNIA NEWS PUBLISHERS ASSOCIATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 LOS ANGELES POLICE PROTECTIVE
LEAGUE,

15 Petitioner,

16 v.

17 CITY OF LOS ANGELES, a municipal
corporation, MICHAEL R. MOORE, Chief of
18 Police for the City of Los Angeles, and DOES 1
through 20, inclusive,

19 Respondents.
20

Case No. 18STCP03495

**INTERVENORS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PETITION FOR WRIT
OF MANDATE**

Hearing:

Date: February 5, 2019

Time: 1:30 p.m.

Dept.: 85

[Petition Filed: December 31, 2018]

21 FIRST AMENDMENT COALITION, a
California non-profit, public benefit
22 corporation; LOS ANGELES TIMES
COMMUNICATIONS LLC, a Delaware
23 limited liability company; CALIFORNIA
NEWSPAPERS PARTNERSHIP L.P., a
24 Delaware limited partnership; THE CENTER
FOR INVESTIGATIVE REPORTING,
25 California non-profit, public benefit
corporation; and CALIFORNIA NEWS
26 PUBLISHERS ASSOCIATION, an association
of California news organizations,
27

28 Intervenors.

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1 Proposed Intervenor First Amendment Coalition (“FAC”), Los Angeles Times
2 Communications LLC (“LAT”), California Newspapers Partnership L.P. (doing business as the
3 Southern California Newspaper Group or SCNG (“SCNG”) and Bay Area News Group (“BANG”)),
4 The Center for Investigative Reporting, Inc. (“CIR”), and California News Publishers Association
5 (“CNPA”) (collectively, “Intervenor”) submit this memorandum of points and authorities in
6 opposition to the Verified Petition for Writ of Mandate and Request and for Stay Order (the “Petition”)
7 of Petitioner Los Angeles Police Protective League (“Petitioner” or “LAPPL”).

8 **I. INTRODUCTION**

9 State Senator Nancy Skinner introduced Senate Bill 1421 (“SB 1421”) in the context of a
10 vigorous public debate about access to a particular set of police records—those relating to the shooting
11 by Sacramento police of an unarmed man, Stephon Clark, in March 2018. Skinner introduced the bill,
12 amending Penal Code Sections 832.7 and 832.8, less than two weeks after Clark’s shooting, while
13 public protests engulfed Sacramento.¹ Critics pointed out that California’s restrictive laws would
14 prevent public access to the disciplinary records of the officers involved. Senator Skinner stated that
15 SB 1421 would “build trust” between law enforcement and communities by opening up key records
16 reflecting police misconduct and discipline. It was thus in the context of providing the public with
17 access to records about *past incidents* that Sen. Skinner introduced SB 1421. And yet, LAPPL has
18 filed a petition seeking to have this Court write into the law limitations to keep records from the Clark
19 incident—and all other records “regarding incidents or reflecting conduct occurring prior to January 1,
20 2019”²—off limits to the public. The Court should not do so because such limitation contravenes the
21 law’s clear language and the Legislature’s intent.

22 LAPPL asks the Court to issue a writ of mandate prohibiting the City of Los Angeles (“City”)
23 from disclosing any “records regarding incidents or reflecting conduct occurring prior to January 1,

24 ¹ See Liam Dillon, *Lawmakers again take aim at California’s tight lid on police shooting investigations*,
25 L.A. TIMES, Mar. 30, 2018, [https://www.latimes.com/politics/la-pol-ca-new-police-transparency-](https://www.latimes.com/politics/la-pol-ca-new-police-transparency-legislation-20180330-story.html)
26 *legislation-20180330-story.html*; Melody Gutierrez, *Stephon Clark killing prompts bid to open police*
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Clark-killing-prompts-bid-to-open-police-12816652.php.

27 ² Such records are referred to herein as “pre-2019” records even though LAPPL’s request is much
28 broader than this. Thus the records LAPPL seeks to withhold are all records created prior to 2019 as
well as any records created after January 1, 2019 referring to pre-2019 incidents or conduct.

2019” (referred to herein as “pre-2019” records). (Petition at 7 (¶ 4).) LAPPL’s argues: (1) statutes cannot be given “retrospective” application “unless it is clear that such was the legislative intent” (Application for Alternative Writ of Mandate (“App.”) at 5); (2) applying Section 832.7’s disclosure requirement to pre-2019 records would constitute “retroactive” application of the law (App. at 6); and (3) the statutory language and legislative history of SB 1421 do not indicate that the legislature intended the law to have “retroactive” application.³ (App. at 7-9.)

LAPPL’s request fails for many reasons. Most importantly, granting the Petition would contravene the plain language of the law, which mandates that “*all*” records relating to “*any*” incidents of the specified types be made available to the public. In light of the clear statutory language, the Court need not consider the legislative history, but this too confirms the Legislature intended SB 1421 to promote government accountability and restore the public’s faith in the legitimacy of law enforcement by increasing public access to *all* records of serious police misconduct, officer-involved shootings, and other serious uses of force, without temporal limitation. Accordingly, the Court is not free to impose the limitation requested by LAPPL. These factors are decisive, because—as LAPPL concedes—if the Legislature intended the law to apply to pre-2019 records, then it should apply to such records. (App. at 2, 5, 7.)

Additionally, LAPPL’s petition should be denied because applying Section 832.7 to pre-2019 records does not constitute improper “retroactive” or “retrospective” application of the law. Rather: (a) the law regulates *disclosure* of records, which occurs after the effective date of the law, and so the law is prospective not retroactive in nature even when applied to pre-2019 records; and in any event (b) peace officers do not have a “vested right” in non-disclosure of pre-2019 records.

II. FACTUAL BACKGROUND

A. SB 1421 Amended Penal Code Section 832.7 to Mandate Disclosure of Certain Records

In recognition of the public’s need for information about serious police misconduct, the

³ LAPPL claims that “existing law” provides for the confidentiality of the records at issue. (App. at 3.) Since SB 1421 took effect on January 1, 2019, after LAPPL filed its Petition, current law now states that the records at issue are not confidential and shall be made available under the California Public Records Act. (Penal Code § 823.7(b) as currently effective.)

1 Legislature passed and Governor Jerry Brown signed into law SB 1421⁴, which modified Penal Code
2 Sections 832.7 and 832.8 and became effective January 1, 2019. (Ex Parte Application for Leave to
3 Intervene (“Application”), Ex. A [Answer in Intervention (“Answer”)], ¶¶ 19-22.) Section 832.7
4 governs the disclosure of “personnel records” of law enforcement officers. (Pen. Code § 832.7, subd.
5 (a).) As amended, it now mandates disclosure of records relating to (A) officer involved shootings and
6 serious uses of force; (B) sustained findings of sexual assault; (C) sustained findings of serious
7 dishonesty. Specifically, the statute now provides:

8 Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or
9 any other law, ***the following peace officer or custodial officer personnel records*** and records
10 maintained by any state or local agency ***shall not be confidential and shall be made available
for public inspection*** pursuant to the California Public Records Act ...:

11 (A) A record relating to the report, investigation, or findings of ***any*** of the following:

12 (i) An incident involving the discharge of a firearm at a person by a peace officer or
13 custodial officer.

14 (ii) An incident in which the use of force by a peace officer or custodial officer against
15 a person resulted in death, or in great bodily injury.

16 (B) (i) ***Any*** record relating to an incident in which a sustained finding was made ... that a peace
17 officer or custodial officer engaged in sexual assault involving a member of the public. ...

18 (C) ***Any*** record relating to an incident in which a sustained finding was made ... of dishonesty
19 by a peace officer or custodial officer directly relating to...” certain things “including, but not
20 limited to, ***any*** sustained finding of perjury, false statements, filing false reports, destruction,
21 falsifying, or concealing of evidence.

22 (Penal Code § 832.7, subd. (b)(1) [emphasis added].) Section 832.7(b)(2) further specifies:

23 Records that shall be released pursuant to this subdivision include ***all*** investigative reports;
24 photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy
25 reports; ***all*** materials compiled and presented for review to the district attorney or to any person
26 or body charged with determining whether to file criminal charges against an officer in
27 connection with an incident ...; and copies of disciplinary records relating to the incident,
including any letters of intent to impose discipline, any documents reflecting modifications of
discipline due to the Skelly or grievance process, and letters indicating final imposition of
discipline or other documentation reflecting implementation of corrective action.

(Penal Code § 832.7, subd. (b)(2) [emphasis added].) Moreover, these amendments were made in the
context of the existing definition of “personnel records,” which applies to “***any*** file maintained under
that individual’s name by his or her employing agency” and containing certain types of information.
No temporal limitation is included or implied by any of these provisions.

The declaration of intent in SB 1421 reflects the Legislature’s findings that the public has a

⁴ SB 1421 was passed on August 31, 2018, signed by Governor Brown on September 30, 2018, and
enacted as Chapter 988 of the 2017-2018 Regular Session. (Ex. A, ¶ 22; Petition, Ex. A.)

1 particularly strong interest in disclosure of records concerning police misconduct and officer-involved
2 shootings:

- 3 (a) Peace officers help to provide one of our state's most fundamental government services. To
4 empower peace officers to fulfill their mission, the people of California vest them with
5 extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society
6 depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead
7 to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well
8 as significant public unrest.
- 9 (b) The public has a right to know all about serious police misconduct, as well as about officer-
involved shootings and other serious uses of force. Concealing crucial public safety matters such
as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts
the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of
hardworking peace officers to do their jobs, and endangers public safety.

9 (Answer, ¶ 20; SB 1421, § 1; Petition, Ex. A.)

11 **B. LAPPL's Petition**

12 On December 18, 2018, counsel for LAPPL filed a virtually identical petition with the
13 California Supreme Court, seeking a statewide injunction against the disclosure of records subject to
14 SB 1421. (See, *San Bernardino County Sheriff's Employees' Benefit Association v. County of San*
15 *Bernardino*, California Supreme Court Case No. S253115, available at
16 <http://appellatecases.courtinfo.ca.gov/search.cfm?dist=0>.) Some of the Intervenor and others opposed
17 the petition, which was summarily denied on January 2, 2019.) On December 31, 2018, three months
18 after SB1421 was enacted but just one day before the bill was scheduled to go into effect, LAPPL filed
19 this Petition for writ of mandate that Section 832.7, as amended by SB 1421, not be applied to records
20 regarding conduct or incidents occurring before January 1, 2019 (pre-2019 records). (Petition, at 6-7,
21 ¶¶ 1, 3, 4.) Petitioner also asked the Court to issue an alternative writ of mandate and an immediate
22 order staying or enjoining any release of pre-2019 records during the pendency of these proceedings
23 (*Id.*), which the Court granted. (Order dated Dec. 31, 2018.)

24 **C. The Intervenor**

25 As shown in Intervenor's Application to Intervene filed herewith, Intervenor each have a
26 strong interest in accessing government records concerning serious misconduct and uses of force by
27 law enforcement officers, and in promoting laws and policies that increase public access to such
28 information. (Application, at 8-12, Answer, ¶¶ 8-13, 25-46.) Intervenor have submitted a California

Public Records Act requests to the City of Los Angeles seeking pre-2019 records covered by Section 832.7(b). (Application, at 8-12; Answer, ¶¶ 25-35)

III. THE PETITION IS WITHOUT MERIT AND SHOULD BE DENIED

A. The Plain Language of Section 832.7 and Legislative History of SB 1421 Require Application to Pre-2019 Records

1. The Plain Language of Section 832.7 Unambiguously Requires Application to Pre-2019 Records

LAPPL claims the Legislature did not intend Section 832.7 (as currently amended by SB 1421) to be applied “retroactively” i.e., that the statute was never intended to apply to pre-2019 records.

LAPPL is wrong because the plain language of the statute mandates application to pre-2019 records.

“The fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*O’Kane v. Irvine* (1996) 47 Cal.App.4th 207, 211.) As LAPPL acknowledges, the Court must first examine the actual language of the statute. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 (*Delaney*); App. at 7:15-17.) “Where the terms of a statute are plain and not absurd, a court may not presume a drafting error and thereby substitute its judgment for the Legislature’s. To do so would contravene our constitutional role, tread into the domain of a coequal branch, and inject intolerable uncertainty into the drafting and lawmaking process, since neither the Legislature nor the public could rely on a court to follow plain statutory language.” (*Joshua D. v. Superior Court* (2007) 157 Cal.App.4th 549, 558 (*Joshua D.*) [citation omitted].) Furthermore, “[s]ignificance should be given, if possible, to every word of an act” and “[c]onversely, a construction that renders a word surplusage should be avoided.” (*Delaney, supra*, 50 Cal.3d at pp. 798-799)

Section 832.7, as amended by SB 1421, mandates that “[n]otwithstanding ... any other law, **the following** peace officer or custodial officer personnel records ... **shall be made available for public inspection** pursuant to the California Public Records Act.” (Penal Code § 832.7, subd. (b)(1).) In addition, Section 832.7(b)(1)(A) mandates disclosure of “[a] record relating to the report, investigation, or findings of **any** of the following” and describes four categories of incidents. Section 832.7(b)(1)(B) further mandates disclosure of “**Any** record relating to an incident in which a sustained finding was made ... that a peace officer or custodial officer engaged in sexual assault;” and Section 832.7(b)(1)(C) mandates disclosure of “**Any** record relating to an incident in which a sustained finding

1 was made ... of dishonesty by a peace officer or custodial officer... including, but not limited to, **any**
2 sustained finding of” various types of conduct. (*Id.* § 832.7. subd. (b)(1)(A), (B), (C).) Furthermore,
3 Section 832.7(b)(2) specifies that “[r]ecords that shall be released pursuant to this subdivision include
4 **all** investigative reports; photographic, audio, and video evidence...” etc.. (*Id.*, § 832.7, subd. (b)(2).)
5 Notably, Section 832.8 defines the “personnel records” subject to 832.7 as “**any file maintained** under
6 that individual’s name relating to any of the following...” (*Id.*, § 832.8, subd. (a).) None of these
7 provisions contain any express or implied temporal limitation.

8 “[T]he word ‘**any**’ **means without limit** and no matter what kind.” (*Delaney, supra*, 50 Cal.3d
9 at p. 798 [emphasis added]; *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635 (*Lopez*) [“The
10 word ‘any’ means that section 340.8 applies to **all** actions described in the statute unless an express
11 exception is made.” (emphasis original)]; *In re E.A.* (2018) 24 Cal.App.5th 648, 660-661 [“The word
12 ‘any’ is not ambiguous. [T]he ordinary meaning of the word ‘any’ is clear, and its use in a statute
13 unambiguously reflects a legislative intent for that statute to have a broad application.” (citation
14 omitted)].) Thus, the Supreme Court held that by its “plain language,” Jessica’s Law—imposing
15 residency restrictions on “**any** person” required to register as a sex offender—applied to sex offenders
16 convicted long before enactment of the law. (*In re E.J.* (2010) 47 Cal.4th 1258, 1272 (*In re E.J.*)
17 [emphasis original; furthermore, such application was a prospective, not retrospective, application of
18 the law].) Similarly, “because **the word ‘all’ means ‘all’ and not ‘some[,]’** [t]he Legislature’s chosen
19 term leaves no room for judicial construction.” (*Joshua D., supra*, 157 Cal.App.4th at p. 558
20 [emphasis added]; *In re Anthony C.* (2006) 138 Cal.App.4th 1493, 1514 [“we must give the word ‘all’
21 its inclusive commonsense meaning”]; *Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138,
22 1146 (*Bell*) [use of the word “all” in statute specifying 10% interest on “all due and unpaid wages”
23 indicated legislative intent to apply the rate “without exception” and hence to unpaid wages that
24 accrued before enactment of the law].) Accordingly, Section 832.7 clearly mandates disclosure of
25 “any” of the specified records, and records relating to “any” specified incidents, without limitation and
26 regardless of the date of the records or the incidents. (See, e.g., *In re E.J., supra*, 47 Cal.4th at p. 1272;
27 *Bell, supra*, 135 Cal.App.4th at p. 1146.)

28 This interpretation is further supported by the language of the California Public Records Act

1 (“CPRA”), which defines “public records”—including the personnel records covered by Section
2 832.7—as any records relating to the conduct of the public’s business, regardless of when the
3 documents were prepared or the events to which they relate. The only exception is in the case records
4 of the Governor’s office, which are only “public records” if they were prepared after 1975. (Gov.
5 Code § 6252, subd. (e).) The Legislature clearly understood how to place temporal limitations on
6 records subject to the CPRA, and chose not to do so for any records except Governor’s office records.
7 (*Id.*) Moreover, “[s]tatutes must be construed with reference to the system of laws of which they are a
8 part,” and “the Legislature is deemed to be aware of statutes and judicial decisions already in effect
9 and to have enacted the new statute in light thereof.” (*People v. Hernandez* (1988) 46 Cal.3d 194,
10 201.) In Section 832.7(b) (as amended by SB 1421), the Legislature mandated that the listed
11 categories of public records be made available to the public pursuant to the CPRA—*i.e.*, pursuant to
12 the CPRA’s normal rule that records are public records regardless of when they were created. (Penal
13 Code § 832.7, subd. (b)(1).) That the Legislature intended disclosure to apply to all records of the
14 specified types regardless of date is further supported by the decisions of numerous other state courts
15 holding that when their public records laws or amendments thereto require disclosure of “all” records,
16 or disclosure of “records” without reference to date, the laws require disclosure regardless of when the
17 records were created.⁵

18 ⁵ See, e.g., *State Org. of Police Officers v. Society of Professional Journalists-University of Haw.*
19 *Chapter* (1996) 83 Hawaii 378, 391 (*SHOPO*) [“No distinction is made, nor is there any exemption,
20 based upon the date that the record was created” and therefore the law “requir[es] disclosure of records
21 maintained by State agencies regardless of when the records came into existence.”]; *State ex rel. Beacon*
22 *Journal Pub. Co. v. University of Akron* (1980) 64 Ohio St.2d 392, 396 (*Beacon Journal*) [Ohio’s public
23 records law “speaks in terms of ‘all public records’ and makes no distinction for those records compiled
24 prior to its effective date;” thus “[t]he date the records were made is not relevant under the statute.”];
25 *Industrial Foundation of South v. Texas Industrial Accident Board* (Tex. 1976) 540 S.W.2d 668, 677
26 (*Industrial Foundation (Texas)*) [“it is clear that the [Texas public record] Act is intended to apply to all
27 records kept by governmental bodies, whether acquired before or after the Act’s effective date. No
28 exception is made for records which were considered confidential prior to June 14, 1973.”]; *Fla. Hosp.*
Waterman, Inc. v. Buster (Fla. 2008) 984 So.2d 478, 487 (*Buster (Fl)*) [“[T]he plain language of the
amendment permits patients to access any record relating to any adverse medical incident ... The use of
the word ‘any’ to define the scope of discoverable records relating to adverse medical incidents, and the
broad definition of ‘patient’ to include those who ‘previously’ received treatment expresses a clear intent
that the records subject to disclosure include those created prior to the effective date of the amendment”
(citation omitted)]; *Cellular S., Inc. v. BellSouth Telecomms., LLC* (Miss. 2017) 214 So.3d 208, 216
(*BellSouth (Miss)*) [even if the records were confidential prior to the public record act amendments
mandating their disclosure, the records “belong to the public” and must be disclosed]; *Mollick v. Twp. of*
Worcester (Pa.Comm. Ct. 2011) 32 A.3d 859, 870 (*Mollick (Pa)*) [“the applicability of the [Right to

1 Finally, nothing in the statutory language indicates a temporally-limited reading of the statute is
2 possible; LAPPL points to no such language.⁶ (See Penal Code § 832.7(b); SB 1421.)

3 Despite the clear mandate that “any” and “all” specified records must be made available and
4 the absence of any suggestion of a temporal limitation, LAPPL claims the Legislature didn’t mean
5 “any” and “all” such records. LAPPL asks the Court to write into the statute a temporal limitation that
6 withholds pre-2019 records. (Petition at 7, ¶ 4.) However LAPPL’s requested limitation is directly at
7 odds with the statute’s plain language, so the Court may not write the requested limitation into the law.
8 (*Delaney, supra*, 50 Cal.3d at p. 798; *Lopez, supra*, 5 Cal.5th at p. 635; *In re E.J., supra*, 47 Cal.4th at
9 p. 1272; *Bell, supra*, 135 Cal.App.4th at p. 1146; see also, e.g., cases cited in note 5.)

10 **2. The Legislative History of SB 1421 Confirms that the Legislature Intended It to**
11 **Apply to Pre-2019 Records**

12 The statute’s plain language is dispositive. However, to the extent the Court deems it
13 necessary to consider evidence of the Legislature’s intent in enacting SB 1421, that evidence
14 demonstrates the Legislature intended the amendments to apply to pre-2019 records.

15 First, SB 1421 must be read, understood, and interpreted in the context of the language of the
16 statute and its apparent purpose. (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 357 [“[T]he
17 words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes
18 or statutory sections relating to the same subject must be harmonized, both internally and with each
19 other, to the extent possible.”].) SB 1421 provides that certain records of police misconduct are
20 subject to disclosure under the CPRA. As noted above, the CPRA defines “public records” broadly,
21 and mandates that such records be disclosed unless expressly exempted by the CPRA. (Gov. Code §§

22 Know Law (“RTKL”)] is not specifically limited to public records created after its January 1, 2009
23 effective date, but only to requests for information made after the effective date;” thus “the RTKL
24 applies to information requested after January 1, 2009, even if created prior to that date.”]; *State ex rel.*
25 *Biden v. Camden-Wyoming Sewer & Water Auth.* (Super.Ct. Nov. 7, 2012, No. 11C-08-004 (RBY))
26 2012 Del. Super. LEXIS 479, at *16-17 (*Biden (Del)*) [“there is no time frame or time period limitation
27 present in [Delaware’s] FOIA.... Thus, the duty to produce records under FOIA applies to any and all
28 applicable records existing on the date the request was made. The time or date when those records were
created is irrelevant.”].

6 LAPPL claims that “SB 1421’s terms contain no express statement of retroactive application.” (App.
at 7.) However, the Legislature is not required to use the word “retroactive.” (See, e.g., *In re E.J., supra*,
47 Cal.4th at p. 1272 [use of the word “any” sufficient to indicate legislative mandate that the law apply
to previously-convicted sex offenders]; *People v. White* (1978) 77 Cal.App.3d Supp. 17, 22 (*White*)
[“whenever” is synonymous with “if” and so the plain language of a statute stating “Whenever a person
is acquitted of a charge and it appears ... that the defendant was factually innocent” showed the statute
applied to persons acquitted prior to the enactment of the statute].)

1 6252, 6254, 6255.) With the one exception for Governor’s records noted above, there is no temporal
2 limitation on the definition of public records—or the mandate that they be disclosed except where
3 specifically exempt. (Gov. Code § 6252(e).) The Legislature enacted SB 1421 in the context of this
4 existing statutory framework. This alone demonstrates that SB 1421 was intended to apply to all
5 records, not just records related to conduct occurring after it took effect. The Legislature recognized
6 the law would apply in this manner. (Declaration of Richard A. Levine in Support of Petition (“Levine
7 Decl.”), Ex. E, pp. 4-5 [“generally all public records are open to public inspection unless a statutory
8 exception exists.”])

9 Indeed, the Legislature was aware from the outset that SB1421 apply to pre-2019 records, as
10 the original committee report on the bill makes clear: “Moreover, our reading of Senate Bill 1421 is
11 that making the records of an officer’s lawful and in policy conduct is retroactive in its impact.”⁷
12 (Levine Decl, Ex. A at 16 [quoting the position of the Los Angeles Co. Professional Peace Officer
13 Association]; see also Ex. E at 10 [arguing SB 1421 would trigger a wave of habeas petitions from
14 previously-convicted prisoners with newfound access to existing police records].) By enacting SB
15 1421 without restricting its application to future “incidents,” the Legislature manifestly expressed its
16 intent that it would apply to records relating to any incidents, whenever they occurred.

17 Furthermore, SB 1421 was enacted in the context of a pitched public debate about the inability
18 of the public generally and the families of those involved in incidents regarding the use of force, in
19 particular, to obtain any meaningful information about such incidents or their investigation by law
20 enforcement agencies.⁸ The legislative history makes clear shedding light on such incidents provided
21 the impetus for SB 1421. (Levine Decl., Ex. E at 8.) Indeed, the fundamental purpose of SB1421 is to

22
23 ⁷ LAPPL argues that this statement is irrelevant because it does not reflect the Legislature’s “collective
24 intent.” (App. at 8, n. 4.) However, the statement is relevant because it shows the Legislature was fully
25 aware of the concerns regarding application of the amendments to pre-2019 records, and enacted them
26 without revising them or disclaiming that application. Furthermore, “[i]n construing a statute, legislative
committee reports, bill reports, and other legislative records are appropriate sources from which
legislative intent may be ascertained.” (*Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385,
1401, quoting *In re John S.* (2001) 88 Cal.App.4th 1140, 1144, fn. 2.)

27 ⁸ See, e.g., note 1, *supra*, Liam Dillon, *Here’s how California became the most secretive state on police*
28 *misconduct*, L.A. TIMES (Aug. 15, 2018), <http://www.latimes.com/politics/la-me-california-police-discipline-secret-20180815-story.html>; *Want more reasons for police reform in California? How about 172 civilian deaths*, SACRAMENTO BEE (July 12, 2018), <https://www.sacbee.com/opinion/editorials/article214773010.html>.

1 “promote public scrutiny of, and accountability for, law enforcement.” (Levine Decl., Ex. E, at 7.) It
2 promotes this purpose by allowing access to information about particular law enforcement officials
3 (Pen. Code § 832.7, subd. (b) [as amended]), thus ensuring accountability both for particular officers,
4 as to whom patterns of misconduct could be identified, and for the manner in which agencies address
5 such misconduct in their ranks. (Levine Decl., Ex. A, at 14, 15-16.) By denying access to records of
6 past misconduct, LAPPL’s interpretation would defeat or severely constrain these purposes.

7 In sum, to the extent consideration of legislative history is required, it manifests an
8 unmistakable understanding and intent that SB 1421 would be applied to pre-2019 records.

9 **B. In Any Event, Applying SB 1421 to Pre-2019 Records Does Not Constitute An**
10 **Impermissible “Retroactive” Application of the Law**

11 LAPPL asserts that in the absence of evidence that the Legislature intended the law should be
12 applied to pre-2019 records, SB 1421 cannot be applied “retroactively” to such documents because
13 “retroactive” application of statutes is disfavored, and applying the law to pre-2019 records would be
14 “retroactive” because it “would violate the right to privacy of . . . information already acquired under
15 existing law.” (App. at 6-7.) As explained above, there is clear evidence that the Legislature intended
16 the law to apply to pre-2019 records, and so LAPPL’s Application fails for this reason alone.
17 LAPPL’s Petition also fails because it is based on the incorrect premises that: (a) applying SB 1421 to
18 pre-2019 records would constitute “retroactive” application of the law; and (b) police had a “vested
19 interest” in the continued application, to pre-2019 records, of the previous statutory scheme regulating
20 disclosure.

21 **1. Applying SB 1421 to the Current and Future Disclosure of pre-2019 Records**
22 **Constitutes *Prospective*, not *Retroactive*, Application of the Law**

23 Under California law, courts distinguish between laws that are “prospective” and those that are
24 “retroactive or retrospective.” (See, e.g. *Quarry v. Doe I* (2012) 53 Cal.4th 945, 955-956 (*Quarry*).)
25 “Prospective” laws do not lose their status a such simply because they involve events or circumstances
26 that occurred before the enactment of the law. “Changes to the law, however, are not necessarily
27 considered retroactive even if their application ‘involve[s] the evaluation of civil or criminal conduct
28 occurring before enactment.’” (*Quarry*, 53 Cal.4th at 956; *Californians for Disability Rights v.*
Mervyn’s, LLC (2006) 39 Cal.4th 223, 230-231 (*Disability Rights*); (*Hermosa BeachStopOil Coalition*
v. City of Hermosa Beach (2001) 86 Cal.App.4th 534, 550 (*Hermosa Beach*) [“‘A statute does not
operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the

1 statute's enactment [citation], or upsets expectations based on prior law. Rather, the court must ask
2 whether the new provision attaches new legal consequences to events **completed** before its
3 enactment.” (emphasis original)].) Thus, “prospective” laws may be and are applied to conduct
4 occurring or documents created prior to the enactment of the law.⁹

5 For example, the Supreme Court recently held that an amendment to the Sexually Violent
6 Predator Act (“SVPA”), enacted after the Court granted review, allows the district attorney to obtain
7 otherwise confidential mental health records of prisoners, regardless of when such records were
8 created. (*People v. Superior Court* (2018) 6 Cal.5th 457, 462 (*Smith*)) Defendant Smith argued that
9 allowing access to his mental health records created before the law’s enactment would constitute
10 “retroactive” application of the law; the Supreme Court disagreed: “Smith cites nothing to support his
11 contention that application of the expanded discovery rule to the current SVP proceeding would
12 qualify as ‘retroactive.’ And, in general, the law is otherwise...” (*People v. Superior Court* (2018) 6
13 Cal.5th 457, 465 (*Smith*) [citing *Quarry*, 53 Cal.4th at 956].) “Even though the treatment records
14 might have been created before section 6603 was amended, the statute now allows copies of those
15 records to be disclosed to the district attorney...” (*Smith, supra*, 6 Cal.5th at p. 466; *People v.*
16 *McClinton* (2018) 29 Cal.App.5th 738, 753 (*McClinton*) [concluding that the same SVPA amendment
17 was applied “prospectively” because even though the mental health records were created prior to the
18 amendment, the *disclosure* occurred after the effective date of the statute].)¹⁰

19 ⁹ By contrast, “a law has a retroactive effect when it functions to ‘change[] the legal consequences of
20 past conduct by imposing new or different liabilities based upon such conduct’ that is, when it
21 ‘substantially affect[s] existing rights and obligations.’” (*Quarry, supra*, 53 Cal.4th at p. 956 [quoting
22 *Disability Rights, supra*, 39 Cal.4th at p. 231].) “In general, application of a law is retroactive only if it
attaches new legal consequences to, or increases a party's liability for, an event, transaction, or conduct
that was completed before the law's effective date.” (*Id.* [quoting *In re E.J., supra*, 47 Cal.4th at p.
1273].)

23 ¹⁰ See also, e.g., *Hermosa Beach, supra*, 86 Cal.App.4th at p. 550 [application of local proposition
banning issuance of drilling permits was prospective application even though it repealed prior exceptions
allowing such drilling and “plainly upsets expectations grounded in the prior law”]; *Disability Rights,*
24 *supra*, 39 Cal.4th at p. 232 [“To apply Proposition 64's standing provisions to the case before us is not to
apply them ‘retroactively,’ as we have defined that term, because the measure does not change the legal
consequences of past conduct by imposing new or different liabilities based on such conduct.”];
25 *Physicians Com. for Responsible Medicine v. Tyson Foods, Inc.* (2004) 119 Cal.App.4th 120, 127-128
(*Tyson Foods*) [statute removing commercial speech (allegedly false advertising) from the protection of
anti-SLAPP statute was properly applied to speech occurring before enactment of the statute, and to a
pending anti-SLAPP motion concerning such speech]; *RCJ Medical Services v. Bonta* (2001) 77
26 Cal.App.4th 493, 503 [time limits for government to recover overpayment properly applied to case that
began before law establishing time limits became effective].

1 As explained, Section 832.7 clearly requires that certain records be made available under the
2 CPRA regardless of when the records were created. (Section III.A *supra*.) Application of the law to
3 pre-2019 records is not “retroactive” because the regulated acts—disclosures under the CPRA—occur
4 after the effective date or the statute. (*Smith, supra*, 6 Cal.5th at pp. 465-66; *McClinton, supra*, 29
5 Cal.App.5th at p. 753.) In other words, because SB 1421 “deals with the availability of public
6 records,” “[t]he date the records were made is not relevant under the statute” and “only a prospective
7 duty [of disclosure] is imposed.” (*Beacon Journal, supra*, 64 Ohio St.2d at p. 396 [“Concededly, the
8 creation of the records took place prior to the legislative amendment at issue, but this is not the conduct
9 regulated by the statute.”]; *SHOPO, supra*, 83 Hawaii at p. 390 [same].)¹¹

10 **2. SB 1421 Does Not Implicate Vested Rights and Therefore Its Application to Pre-**
11 **2019 Records Does Not Constitute an Impermissible “Retroactive” Application**

12 Finally, LAPPL’s Application also fails because it is based on the incorrect premise that peace
13 officers had a “vested right” in the continued application of the prior statutory scheme to pre-2019
14 records. (*E.g.*, App. at 6.) However, law enforcement officers have never had the absolute right of
15 privacy in records relating to their conduct LAPPL describes. Rather, such records have only been
16 subject to procedural requirements for disclosure. Thus, peace officers have no “vested right” in the
17 confidentiality of these records, nor in the continuation of the prior statutory scheme.

18 “[I]t is presumed that a statutory scheme is not intended to create private contractual or vested
19 rights ... ,’ and a party claiming otherwise must overcome the presumption.” (*Doe v. California Dept.*
20 *of Justice* (2009) 173 Cal.App.4th 1095, 1106-07 (*Doe*); *Tyson Foods, supra*, 119 Cal.App.4th at
21 p. 125 [“The repeal of a statutory right or remedy, however, presents entirely distinct issues from that
22 of the prospective or retroactive application of a statute.”].) “Where ‘rights’ have been subject to
23 modification or elimination at any time by the Legislature, courts have found them to be neither fixed
24 nor vested.” (*Buster (Fl), supra*, 984 So.2d at pp. 491-92; *Smith, supra*, 6 Cal.5th at p. 466.)

25 ¹¹ Other courts have also found that expanding the right to access previously-created documents
26 constitutes a prospective, not “retroactive,” application of public records laws. (See. e.g., *BellSouth*
27 *(Miss), supra*, 214 So.3d at p. 216 [purported ‘retroactivity’ of amendments mandating disclosure of
28 previously confidential documents was a “non issue”]; *Mollick (Pa), supra*, 32 A.3d at p. 870 [state’s
Right to Know Law is remedial legislation that applies to requests after the effective date of the statute
(but regardless of the date documents were created), and is thus not impermissibly “retroactive”]; *Biden*
(*Del*), *supra*, 2012 Del. Super. LEXIS 479, at *17 [“the duty to produce records under FOIA applies to
any and all applicable records existing on the date the request was made” and the “date when those
records were created is irrelevant” so the law was not retroactive.]

1 Police officers have never had a “right to confidentiality in all of their personnel file
2 information,” (App. at 6) or indeed to any of that information. Rather, under Penal Code sections
3 832.7 and 832.8 and Evidence Code sections 1043 and 1045, peace officers have been provided only
4 with *procedural* protections governing the disclosure of personnel records. Such information has
5 always been subject to disclosure in criminal or civil litigation, subject to the procedural requirements
6 imposed by Evidence Code sections 1043 and 1045. (Pen. Code § 832.7, subd. (f) (“Nothing in this
7 section shall affect the discovery or disclosure of information contained in a peace or custodial
8 officer’s personnel file pursuant to Section 1043 of the Evidence Code.”); Evid. Code § 1043
9 [providing for discovery of “peace or custodial officer personnel records or records”].)

10 Moreover, the individual right of privacy, as such, has never exempted from disclosure police
11 or other government employee personnel records of the type at issue here. It has long been the law
12 that personnel and performance records regarding serious misconduct of public employees are subject
13 to disclosure under the CPRA notwithstanding an assertion of privacy.¹² Any different treatment, or
14 exemption of, police personnel records has been based exclusively on the provisions of Penal Code
15 sections 832.7 and 832.8 and Evidence Code sections 1043 and 1045, which the Legislature is free to
16 modify or partially repeal, as it has done in enacting SB 1421. (See , e.g., *Long Beach Officers Ass’n*
17 *v. City of Long Beach* (2014) 59 Cal.4th 59, 67-68 [explaining the history of the “Pitchess statutes,”
18 i.e. Penal Code section 832.5, *et seq.*, and Evidence Code sections 1043 and 1045]; *Commission on*
19 *Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297 [policy favoring
20 disclosure especially salient when the subject is law enforcement].) Similarly, the California
21 Constitution does not provide any heightened privacy right for peace officers as compared to other
22 individuals. LAPPL repeatedly and misleadingly cites Article I, Section 3(b)(3), claiming that it

23
24 ¹² *AFSCME v. Regents* (1978) 80 Cal.App.3d 913, 918 [“where the charges are found true, or discipline
25 is imposed” disclosure of public employees’ disciplinary records is required because “the strong public
26 policy against disclosure vanishes”]; *Bakersfield City School Dist. v. Superior Court* (2004) 118
27 Cal.App.4th 1041, 1047 [the public’s right to know outweighs an employee’s privacy when the charges
28 are found true or when the records “reveal sufficient indicia of reliability”]; *BRV, Inc. v. Superior Court*
(2006) 143 Cal.App.4th 742, 758-759 [requiring the disclosure of records reflecting an investigation of a
high-level official, even as to charges that may be unreliable because “the public’s interest in
understanding why [the official] was exonerated and how the [agency] treated the accusations outweighs
[the official’s] interest in keeping the allegations confidential.”].)

1 provides special protection for police personnel records that should influence the Court’s interpretation
2 of SB 1421. (App. at 2, 4, 6.) This is not the case. Section 3(b)(3) protects the rights of all individuals
3 equally.¹³ (Cal. Const., Art. I, § 3(b)(3).) Statutes concerning access to police personnel records are
4 included within the scope of Section 3(b)(3), but not given any higher protections. (*Id.*) In any event,
5 the mere exception of a category of laws from the rule of construction adopted in the California
6 constitution does not establish any affirmative constitutional right, and LAPPL provides no authority
7 for the proposition that it does.

8 Thus, contrary to LAPPL’s contention, neither peace officer personnel records nor information
9 obtained therefrom have ever been sacrosanct under either California constitutional or statutory law.
10 None of the decisions cited by LAPPL holds to the contrary. Consequently, SB 1421 does not affect
11 any vested rights of peace officers. (*Doe, supra*, 173 Cal.App.4th at pp. 1106-07.) Information
12 governed by Penal Code sections 832.7 and 832.8 has always been subject to disclosure in both civil
13 and criminal litigation. The scope of any such protections is subject to change by the Legislature and
14 SB 1421 made such a change, by mandating disclosure not only pursuant to a discovery motions, but
15 also in response to requests pursuant to the CPRA. (Pen. Code § 832.7(b).)

16 Numerous courts have held that such statutory revisions requiring disclosure of sensitive
17 information apply to pre-existing records, and that no “vested right” in non-disclosure attached to such
18 records. As shown above, amendments providing for the disclosure of mental health records of
19 prisoners being evaluated under the SVPA were properly applied to records created prior to the
20 effective date of the amendments. (See *Smith, supra*, 6 Cal.5th at p. 466 [prior protections for mental
21 health records were not absolute so it was not reasonable to assume records “would necessarily remain
22 forever confidential”]; *McClinton, supra*, 29 Cal.App.5th at p. 753.) Similarly, the Court in *Doe* held
23 that previously-convicted sex offenders had no vested right in a previous statutory exclusion from
24

25 ¹³ Section 3(b)(3), provides that “[n]othing in this subdivision [guaranteeing access to public records]
26 supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any
27 statute, court rule, or other authority to the extent that it protects that right to privacy, including any
28 statutory procedures governing discovery or disclosure of information concerning the official
performance or professional qualifications of a peace officer.” (Cal. Const., Art. I, § 3(b)(3).) Thus,
everyone’s Constitutional right of privacy (guaranteed in Section I) is equally protected, and there is no
affect on the construction of statutes, court rules and authority protecting *anyone’s* privacy.

1 being listed on the Megan's Law website after an amendment eliminated the exclusion (*Doe, supra*,
2 173 Cal.App.4th at pp. 1106-07; see also *White, supra*, 77 Cal.App.3d Supp. 17 at pp. 21-22 [a
3 statutory enactment providing for expungement of records relating to the prosecution of certain
4 persons found to be innocent was held to be retroactively applicable].)¹⁴

5 In sum, for the additional reason that police officers have no "vested right" in the prior
6 statutory procedures regarding pre-2019 records, the Petition is without merit and should be denied.

7 **IV. CONCLUSION**

8 The Petition is without merit. Granting the relief it seeks would contravene the intent of the
9 Legislature, expressed in the plain language of Penal Code Section 832.7 and the legislative history,
10 that any and all of the specified records be made available under the CPRA, regardless of date. The
11 Petition should be denied and the Court should find and hold that the amendments enacted by SB 1421
12 are applicable to all of the records they govern, including records regarding conduct occurring prior to
13 January 1, 2019.

14 Dated: January 17, 2019

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24 ¹⁴ See also, e.g., *Buster (Fl)*, *supra*, 984 So.2d at pp. 491-92 [explaining that "[w]here 'rights' have been
25 subject to modification or elimination at any time by the Legislature, courts have found them to be
26 neither fixed nor vested" and holding there was no vested right in confidentiality of records of adverse
27 medical events]; *Doe v. Sundquist* (Tenn. 1999) 2 S.W.3d 919, 925 [birth parents had no vested right in
28 continued confidentiality of adoption records including because even under prior law there was no
absolute guarantee of confidentiality, and amended law expanding access to birth records was held to be
"procedural in nature"]; *Industrial Foundation (Texas)*, *supra*, 540 S.W.2d at p. 677 ["The Legislature
has not, by determining that government information formerly kept confidential should be disclosed,
impaired any vested right of a claimant to the confidentiality of the information."]; *BellSouth (Miss)*,
supra, 214 So.3d at p. 216 [no 'vested right' in confidentiality under an earlier protective order]; *Beacon
Journal, supra*, 64 Ohio St.2d at pp. 396-397.)